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Washington, D.C.

Calendar No. 217

101ST CONGRESS
1st Session

SENATE

REPORT
101-117

FAIR LABOR STANDARDS AMENDMENTS OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1182]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1182) to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

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29-010

S543-12

I. The Bill as Reported

[S. 1182, 101st Cong., 1st Sess.]

A BILL To amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Fair Labor Standards Amendments of 1989".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

SEC. 2. MINIMUM WAGE INCREASE.

(a) INCREASE.—Paragraph (1) of section 6(a) (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending September 30, 1989, not less than $3.85 an hour during the year beginning October 1, 1989, not less than $4.25 an hour during the year beginning October 1, 1990, and not less than $4.55 an hour after September 30, 1991;".

(b) ADJUSTMENT.—

(1) DUTIES.—

(A) REVIEW.—Not later than January 1, 1992, and each January 1 thereafter, the Minimum Wage Review Board shall begin a review of current economic data on wages, prices, and other economic indicators and determine the amount by which the minimum wage rate in effect under section 6(a)(1) of the Fair Labor Standards Act of 1938 should be adjusted to reflect the changes in wages and prices since the last adjustment in such rate.

(B) TRANSMITTAL.—Not later than October 1, 1992, and each October 1 thereafter, the Minimum Wage Review Board shall transmit to Congress a recommendation to adjust the minimum wage rate under such section 6(a)(1). The recommendation shall include an estimate of the economic effects of placing such wage rate into effect.

(2) ESTABLISHMENT.—

(A) COMPOSITION.—

(i) IN GENERAL.—There is established the "Minimum Wage Review Board" (hereinafter in this paragraph referred to as the "Board"). The Board shall be composed of 5 members appointed as follows:

(I) One member of the Board shall be appointed by the Speaker of the House of Representatives.

(II) One member of the Board shall be appointed by the Minority Leader of the House of Representatives.

(III) One member of the Board shall be appointed by the Majority Leader of the Senate.

(IV) One member of the Board shall be appointed by the Minority Leader of the Senate.

(V) The fifth member of the Board shall be appointed jointly by the appointing authorities referred to in subclauses (I), (II), (III), and (IV).

Initial appointments to the Board shall be made within 180 days of the date of the enactment of this Act.

(ii) TERMS.—The term of office of a member of the Board shall be 5 years, except that of the initial members of the Board—

(I) the member appointed under clause (i)(V) shall be appointed for a term of 5 years;

(II) the member appointed under clause (i)(I) shall be appointed for a term of 4 years;

(III) the member appointed under clause (i)(IV) shall be appointed for a term of 3 years;

(IV) the member appointed under clause (i)(III) shall be appointed for a term of 2 years; and

(V) the member appointed under clause (i)(II) shall be appointed for a term of 1 year.

(iii) VACANCIES.—Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom the individual succeeds. Each member of the Board shall be eligible for reappointment. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

(iv) REMOVAL.—Any member of the Board may be removed jointly by the appointing authorities under clause (i) for neglect of duty or malfeasance in office.

(v) CHAIRPERSON.—The Chairperson of the Board shall be the member of the Board appointed under clause (i)(V).

(B) COMPENSATION AND EXPENSES.—

(i) COMPENSATION.—Members of the Board who are not officers or employees of the Federal Government shall each be paid at a rate not to exceed the rate of basic pay payable for GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of services for the Board.

(ii) EXPENSES.—While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(C) GENERAL AUTHORITY.—The Board may prescribe such rules as may be necessary to carry out its duties under paragraph (1). The Board may hold such hearings, sit and

act at such times and places, take such testimony, and receive such evidence as it deems advisable. Upon request of the Board, the head of any Federal department or agency is authorized to detail, on a reimbursable basis, any of the personnel of such department or agency to the Board to assist it in carrying out its duties under paragraph (1).

(D) ASSISTANCE.—The Secretary of Labor shall furnish such professional, technical, and research assistance as is required by the Board. The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request to carry out its duties under this subsection. The Board may secure directly from any department or agency of the United States such information as the Board may require to carry out its duties under paragraph (1). Upon request of the Board, the head of any such department or agency shall furnish such information to the Board.

(E) MAILS.—The Board may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(F) STAFF.—The Board may appoint an executive director of the Board to perform such duties as the Board may prescribe. With approval of the Board, the executive director may appoint and fix the pay of such clerical personnel as are necessary for the Board to carry out its duties. The executive director and staff shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the annual rate payable for grade GS–18 of the General Schedule under section 5332 of such title. The executive director, with the concurrence of the Board, may obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

SEC. 3. CHANGE IN ENTERPRISE TEST.

(a) IN GENERAL.—Subsection (s) of section 3 (29 U.S.C. 203(s)) is amended to read as follows:

"(s)(1) 'Enterprise engaged in commerce or in the production of goods for commerce' means an enterprise that—

"(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

"(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

"(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted

children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

"(C) is an activity of a public agency.

"(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.".

(b) PRESERVATION OF COVERAGE.—

(1) IN GENERAL.—Any enterprise that on September 30, 1989, was subject to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) is not subject to such section shall—

(A) pay its employees not less than the minimum wage in effect under such section on September 30, 1989;

(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

(C) remain subject to section 12 of such Act (29 U.S.C. 212).

(2) VIOLATIONS.—A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938, as the case may be.

(c) CONFORMING AMENDMENTS.—

(1) SECTION 13(a).—Section 13(a) (29 U.S.C. 213(a)) is amended by striking out paragraphs (2) and (4).

(2) SECTION 13(g).—Section 13(g) is amended—

(A) by striking out "paragraphs (2) and" and inserting in lieu thereof "paragraph"; and

(B) by striking out ", except that" and all that follows in such subsection and inserting in lieu thereof a period.

(d) TECHNICAL AMENDMENTS.—Section 3(r) (29 U.S.C. 203(r)) is amended—

(1) by inserting "(1)" after "(r)";

(2) by striking out ": *Provided*, That, within" and inserting in lieu thereof a period and "Within";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(4) by striking out "For purposes of this subsection" and inserting in lieu thereof the following:

"(2) For purposes of paragraph (1)";

(5) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(6) by striking out "public or private or" in subparagraph (A) (as so redesignated).

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1989.

SEC. 4. PUERTO RICO, VIRGIN ISLANDS, AND AMERICAN SAMOA.

(a) SPECIAL INDUSTRY COMMITTEES.—Section 5 (29 U.S.C. 205) is amended—

(1) in the first sentence of subsection (a), by striking out "Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands," and inserting in lieu thereof "American Samoa";

(2) in the second sentence of subsection (a)—

(A) by striking out "such island or islands" and inserting in lieu thereof "American Samoa"; and

(B) by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "American Samoa";

(3) by striking out subsection (e); and

(4) in the section heading, by striking out "PUERTO RICO AND THE VIRGIN ISLANDS" and inserting in lieu thereof "AMERICAN SAMOA".

(b) MINIMUM WAGE.—Section 6 (29 U.S.C. 206) is amended—

(1) in subsection (a)(3)—

(A) in the first sentence, by striking out all that follows "appoint" through the period at the end of the sentence and inserting in lieu thereof "pursuant to sections 5 and 8."; and

(B) by striking out the second sentence; and

(2) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

"(A) the United States,

"(B) an establishment that is a hotel, motel or restaurant,

"(C) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

"(D) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

"(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on October 1, 1989, and each October 1 thereafter through October 1, 1993, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on October 1, 1993.

"(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on October 1, 1989, and each October 1 thereafter through October 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on October 1, 1994.

"(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on October 1, 1989, and each October 1 thereafter through October 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on October 1, 1995.".

(c) WAGE ORDERS.—Section 8 (29 U.S.C. 208) is amended—

(1) in the first sentence of subsection (a), by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "American Samoa";

(2) by striking out the second sentence of subsection (a);

(3) in the third sentence of subsection (a)—

(A) by striking out "Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands," and inserting in lieu thereof "American Samoa"; and

(B) by inserting before the period at the end of the sentence ", and who but for section 6(a)(3) would be subject to the minimum wage requirements of section 6(a)(1)";

(4) in the third sentence of subsection (b)—

(A) by striking out "Puerto Rico or in the Virgin Islands" and inserting in lieu thereof "American Samoa";

(B) by striking out "Puerto Rico and the Virgin Islands" and inserting in lieu thereof "American Samoa"; and

(C) by striking out "section 6(c)" and inserting in lieu thereof "section 6(a)(3)"; and

(5) in the section heading, by striking out "PUERTO RICO AND THE VIRGIN ISLANDS" and inserting in lieu thereof "AMERICAN SAMOA".

(d) EMPLOYMENT UNDER SPECIAL CERTIFICATES.—Section 14(b) (29 U.S.C. 214(b)) is amended by striking out "(or in" and all that follows through "section 6(c))" each place it appears in paragraphs (1)(A), (2), and (3).

SEC. 5. TIP CREDIT.

Effective October 1, 1989, the third sentence of section 3(m) (29 U.S.C. 203(m)) is amended by striking out "in excess of 40 per centum of the applicable minimum wage rate," and inserting in lieu thereof "in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning October 1, 1989, and (2) 50 percent of the applicable minimum wage rate after September 30, 1990,".

SEC. 6. TRAINING WAGE.

(a) IN GENERAL.—

(1) AUTHORITY.—Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2) while such employee is engaged in on-the-job training.

(2) WAGE RATE.—The wage referred to in paragraph (1) shall be a wage—

(A) of not less than $3.35 an hour during the year beginning October 1, 1989; and

(B) beginning October 1, 1990, of not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

(b) WAGE PERIOD.—An employer may pay an eligible employee the wage authorized by subsection (a) for a period that—

(1) begins on or after October 1, 1989;

(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

(3) ends before September 30, 1992.

(c) WAGE CONDITIONS.—No eligible employee may be paid the wage authorized by subsection (a) by an employer if—

(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

(d) LIMITATIONS.—

(1) EMPLOYEE HOURS.—During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

(2) DISPLACEMENT.—

(A) PROHIBITION.—No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

(B) DISQUALIFICATION.—If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

(e) NOTICE.—Each employer shall provide to any eligible employee who is paid the wage authorized by subsection (a) a written notice stating the requirements of this section and the remedies provided by subsection (f) for violations of this section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

(f) ENFORCEMENT.—Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

(g) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE EMPLOYEE.—

(A) IN GENERAL.—The term "eligible employee" means with respect to an employer an individual who—

(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802 (8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)); and

(ii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

(B) DURATION.—An employee shall be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 60 days by all employers. For purposes of this subparagraph, the term "employer" means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

(C) PROOF.—

(i) IN GENERAL.—An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

(ii) REGULATIONS.—The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

(2) ON-THE-JOB TRAINING.—The term "on-the-job training" means training that—

(A) is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment; and

(B) should be at least 30 days in duration.

(h) REPORT.—The Secretary of Labor shall report to Congress not later than July 1, 1992, on the effectiveness of the wage authorized by subsection (a). The report shall include—

(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

(3) the nature and duration of the training provided under such wage; and

(4) the degree to which employers used the authority to pay such wage.

SEC. 7. MAXIMUM HOUR EXEMPTION FOR EMPLOYEES RECEIVING REMEDIAL EDUCATION.

Section 7 (29 U.S.C. 207) is amended by adding at the end thereof the following new subsection:

"(q) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

"(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

"(2) designed to provide reading and other basic skills at an eighth grade level or below; and

"(3) does not include job specific training.".

SEC. 8. APPLICATION OF RIGHTS AND PROTECTIONS OF FAIR LABOR STANDARDS ACT OF 1938 TO CONGRESSIONAL EMPLOYEES.

(a) SENATE EMPLOYEES.—

(1) SENSE OF SENATE.—It is the sense of the Senate that the rights and protections provided under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) should apply with respect to an employee of the Senate or any office thereof.

(2) ADMINISTRATION.—Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of such Act (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2(a), the Senate Committee on Rules and Administration shall report to the Senate a Senate resolution (including necessary amendments to Senate rules and regulations) that—

(A) applies rights and protections in accordance with paragraph (1);

(B) establishes the scope of coverage of such rights and protections; and

(C) establishes such remedies and enforcement and other procedures as are necessary to carry out subparagraph (A).

(b) HOUSE EMPLOYEES.—

(1) IN GENERAL.—The rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to any employee in an employment position in the House of Representatives or under the Architect of the Capitol and to any employing authority of the House of Representatives.

(2) ADMINISTRATION.—In the administration of this section, the remedies and procedures under the Fair Employment Practices Resolution shall be applied.

(3) DEFINITION.—As used in paragraph (2), the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 3, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

SEC. 9. CIVIL PENALTIES FOR VIOLATIONS.

Section 16(e) (29 U.S.C. 216(e)) is amended—

(1) in the first sentence, insert after "or any regulation issued under that section," the following: "or any person who repeatedly or willfully violates section 6 or 7"; and

(2) in paragraph (3), by adding after "section 15(a)(4)" the following: "or a repeated or willful violation of section 15(a)(2)".

SEC. 10. REGULATIONS CONCERNING CERTAIN EMPLOYEES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that interpret the professional exemption contained in section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)) in a manner that permits computer systems analysts, software engineers, and other similarly skilled professional workers to qualify under such section for such exemption. Such regulations shall ensure that such employees shall continue to be eligible for such exemption even if such employees are compensated on an hourly basis, except that to qualify for such exemption such employees shall be compensated at an hourly rate that is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

SEC. 11. STUDIES AND SURVEYS.

(a) STUDIES AND SURVEYS.—The Minimum Wage Review Board established under section 2(b) shall, subject to the availability of funds, enter into a contract with the Secretary of Labor to provide for the conduct by the Bureau of Labor Statistics of—

(1) a study of the impact of increasing the Federal minimum wage required under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) (as amended by section 2(a) of this Act) on rural areas and high unemployment areas; and

(2) surveys and research on the characteristics of minimum wage employment and the impact of modification of the scope of coverage and minimum wage levels under the Fair Labor Standards Act of 1938 (7 U.S.C. 201 et seq.) (as amended by this Act) and section 6 of this Act, including—

(A) a survey of the distribution of wages earned by employees subject to the Fair Labor Standards Act of 1938 and section 6 of this Act by wage level, industry affiliation, and regional, State, and other demographic characteristics, including an analysis of the feasibility of conducting such survey on a regular periodic basis;

(B) a study of the impact of increasing the sales level that subjects an enterprise to the Fair Labor Standards Act of 1938 under section 3(s) of such Act (29 U.S.C. 203(s)) (as amended by section 3(a) of this Act);

(C) a study of the degree of compliance with, and methods of enforcement of, the Fair Labor Standards Act of 1938, including goals and plans for ensuring compliance with such Act (as amended by this Act) and section 6 of this Act;

(D) a study of the impact of increasing the tip credit provided under section 3(m) of such Act (as amended by section 5 of this Act);

(E) a study of the impact of the increase of minimum wage levels on public assistance and family life and family formation; and

(F) a study of the stimulative economic effect of the increase of minimum wage levels.

(b) FACTORS.—In carrying out the study described in subsection (a)(1), the following shall be considered:

(1) The impact of the small business exemption provided under section 3(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(s)) (as amended by section 3(a) of this Act).

(2) The impact of the training wage established under section 6 of this Act.

(3) Employment levels, the potential for job creation, the average cost of living, average wage levels, and average income levels in rural areas and high unemployment areas.

(c) COMPLETION DATES.—The Minimum Wage Review Board shall require the studies and surveys to be completed as follows:

(1) The study conducted under subsection (a)(1) shall be completed not later than June 1, 1991.

(2) The survey and study under subparagraphs (A) and (C) of subsection (a)(2) shall be completed not later than September 30, 1991.

(3) The studies required under subparagraphs (B), (D), (E), and (F) of subsection (a)(2) shall be completed not later than September 30, 1992.

The Minimum Wage Review Board shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate the results of the studies and surveys.

(d) CONTRACTS.—The contract entered into under subsection (a) shall require reimbursement by the Minimum Wage Review Board of the expenses incurred by the Bureau of Labor Statistics in the conduct of the studies and surveys described in such subsection.

(e) DEFINITIONS.—As used in this section:

(1) HIGH UNEMPLOYMENT AREA.—The term "high unemployment area" means a standard metropolitan statistical area that has an unemployment rate that is at least 150 percent higher than the national unemployment rate.

(2) RURAL AREA.—The term "rural area" shall have the same meaning given such term in section 1886(d)(2)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(2)(D)).

II. SUMMARY OF THE BILL

S. 1182, the Fair Labor Standards Amendments of 1989, amends the Fair Labor Standards Act of 1938 by adjusting the federal minimum wage provided in section 6(a)(1) of the FLSA from the current level of $3.35 an hour to $4.55 an hour, in three annual steps. Beginning on October 1, 1989, the minimum wage will be $3.85 an hour. Beginning on October 1, 1990, the minimum wage will be $4.25 an hour, and on October 1, 1991, it will be $4.55 an hour.

S. 1182 also creates a five member review board to recommend periodic increases in the minimum wage. The board will be appointed by the leaders of Congress, and is strictly advisory. The review board will base its recommendations on wages, prices, and other relevant economic data.

Also adjusted is the retail or service enterprise test provided in section 3(s), 13(a)(2) and 13(a)(4) of the FLSA, to a more uniform level of $500,000 in annual gross sales. Current provisions regarding public agencies, hospitals, schools, and family businesses remain unchanged from existing law. Employees of establishments currently covered but falling into the expanded exempt categories will continue to benefit from current wage, overtime, and child labor protections.

The new rates are applicable to Puerto Rico and the Virgin Islands. This is a change from the existing law providing for these rates to be established by special industry committees. American Samoa will continue to utilize the procedures in the FLSA regarding special industry committees.

However, in the case of Puerto Rico, the full 6(a)(1) rate will continue to apply to employees of the United States, hotel, motel, restaurants, and related food service establishments. The full rate will also apply to workers in industries with average wages of $4.65 an hour or above. For industries with average wages between $4.00 and $4.64, the full rate must be reached in equal increments in five years. In industries with average wages below $4.00 an hour, the full rate must be reached in equal increments in six years, and if the average wage in public sector categories is below $4.00 and those workers were brought into coverage under the FLSA by Public Law 99-150, the full rate must be reached in equal increments in seven years.

The bill adjusts the tip credit provision of the FLSA from current 40% to 45% in 1990 and 50% thereafter.

The bill establishes a training wage for inexperienced workers. Eligible employees may be paid the lower rate ($3.35 or 85% of the applicable 6(a)(1) rate, whichever is higher) while receiving on-the-job training for the first 60 days of cumulative work experience. Safeguards and remedies against displacement of existing employees are included in the provision. Employers are limited to payment of the lower rate to no more than 25% of the hours worked in the establishment, and migrant and seasonal farmworkers and non-immigrant aliens admitted to perform temporary farm labor under the (H)(ii)(a) program are not eligible for the training wage.

The bill also provides that up to 10 hours in the work week will be exempt from the overtime provisions of the FLSA for periods during which the employee is receiving remedial education. The exemption only applies to such employees lacking a high school diploma or eighth grade basic skill levels, if the education is designed to provide those basic skills, and does not include job specific training.

The bill also provides for extending FLSA protections to House and Senate employees, and increases civil penalties for repeated or willful violations of the FLSA. S. 1182 also directs the Secretary to promulgate regulations interpreting the professional exemption in a manner which permits computer system analysts, software engineers, and other similarly skilled computer professionals to qualify, but only if such employees are compensated at an hourly rate at least six and one-half times the section 6 wage rate.

Finally, the bill provides for several studies and surveys to be conducted on a variety of issues relating to the FLSA.

III. Background and Need for Legislation

A. BACKGROUND

June 25, 1988 marked the 50th anniversary of the passage of the Fair Labor Standards Act of 1938. At the beginning of the legislative debate on this uniform federal labor standards bill, President Roosevelt stated:

> Our nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-body working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason of chiseling workers' wages or stretching workers' hours.

A year, a month and a day later when President Roosevelt signed the Fair Labor Standards Act into law, the President observed: "Except for the Social Security Act, it is the most far-reaching, far-sighted program ever adopted here or in any country".

This public policy of a level below which wages could not fall was, and still is, intended to enable a full-time worker to maintain a minimum living standard without either government assistance or the deprivation of basic necessities.

During original consideration of the FLSA and during the debate on subsequent amendments to expand coverage and to adjust the wage levels into account for inflation, business opponents have stridently claimed immediate and significant adverse employment consequences flowing from the establishment and maintenance of the minimum wage.

Yet Congress has repeatedly reaffirmed the national commitment to a minimum wage which is a living wage, and the opposition predictions of significant adverse employment consequences have not come to pass. A brief review of the legislative history of the major amendments of the FLSA and the accompanying employment impact might help put current predictions of dire employment consequences in perspective.

1949 amendments

Congress raised the minimum wage from 40 cents to 75 cents an hour in 1949, an 87.5% increase. During the deliberation of the amendments, business organizations consistently warned of significant increases in unemployment and inflation as a result of the legislation.

Yet overall unemployment decreased from 5.9% in 1949 to 5.3% in 1950, youth unemployment fell from 13.4% to 12.2% and total employment rose more than the prior year when there was no increase in the wage.

1955 amendments

Congress raised the wage to $1.00 an hour, a 33% increase. Again Congress heard stern predictions from business groups of the certain unemployment and inflation which would follow as a consequence of the increase. The U.S. Chamber of Commerce warned in

testimony to the Committee: "Low paid workers who are covered by the law will have been barred from jobs by members of Congress."

Yet overall unemployment fell from 4.4% to 4.1%, youth unemployment slightly increased from 11.0% to 11.1%, and total employment increased more in 1956 than in the prior two years in which there had been no increase.

1961 amendments

Congress increased the minimum wage to $1.15, and to $1.25 in 1963, and expanded coverage to retail and service establishments. Again during consideration of the legislation, business opponents predicted significant impact on unemployment and inflation. In testimony before this Committee, the U.S. Chamber of Commerce stated: "Many retail and service employers have already predicted layoffs * * * if brought under coverage of the $1.25 law." The Chamber went on to assert: "Whatever good might result from minimum wage legislation would be far outweighted by the unemployment and inflation the legislation would provoke".

Yet retail and service employment, which had increased 1.2% between 1960 and 1961 when not covered by the FLSA, jumped 3.3% between 1961 and 1962. Overall unemployment fell from 6.7% to 5.5%, youth unemployment fell from 16.8% to 14.7%, and overall employment increased six times as much as in the prior year when there had been no increase. Inflation increased at a lower rate in the year after the increase in the minimum wage took effect than in the year prior to the increase.

1966 amendments

Congress increased the minimum wage from $1.25 to $1.40 in 1967, to $1.60 in 1968, and expanded the coverage of the FLSA. Once again this Committee received testimony from a variety of business organizations predicting significant adverse impact on employment and inflation. Yet unemployment fell from 3.8% in 1966 to 3.6% in 1968, youth unemployment fell from 12.8% to 12.7% for the same time period, employment increased by over 3 million workers, and, in 1969, labor market participation rates hit a postwar high.

The increase which took effect in 1968 raised the minimum wage to 55.8% of the average hourly earnings, the highest relative level of the minimum wage. Yet careful study of its impact on employment led Secretary of Labor George Shultz to report to Congress in 1970:

> There was continued economic growth during the period covering the third phase of the minimum wage and maximum hours standards established by the FLSA Amendments of 1966. Total employment on non-agricultural payrolls (seasonally adjusted) rose in 28 out of 32 consecutive months between January 1967 and september 1969. In the most recent 12-month period, employment climbed 3.2% * * * between September 1968 and September 1969. Employment rose in all major nonagricultural industry divisions during the 12 month period between September 1968

> and September 1969. In retail, services and state and local government sector—where the minimum wage had its greatest impact in 1969, since only the newly covered workers were slated for Federal minimum wage increases—employment rose substantially.

The report to Congress of Secretary of Labor Hodgson the following year confirmed Secretary Shultz's analysis:

> In view of the overall economic trends, it is doubtful whether changes in the minimum had any substantial impact on wage, price, or employment trends. Of much greater significance, however, is the fact that the 15 cent boost did help two million workers recover some of the purchasing power eroded by the steady upward movement of prices which had started even before the enactment of the 1966 amendments.

1974 amendments

Congress increased the minimum to $2.00 in May of 1974, $2.10 in 1975, and $2.30 in 1976. In hearings before this Committee prior to passage of the increase, businesses again testified to the adverse employment impact of the proposal. One witness for the American Retail Federation testified that they would be forced to implement "alternatives", including: "Obviously to reduce the number of employees. The first ones to go would have to be marginal employees we in many cases are carrying now. We would also have to suggest retirement to employees who are no longer productive but who we are currently carrying".

Yet even during the 1975 recession during which unemployment rose from 5.5% in 1974 to 7.6% in 1976 and youth unemployment increased from 16% to 19%, retail employment increased by 655,000 jobs, a 5.2% increase.

1977 amendments

Congress increased the minimum wage in four steps, to $2.65 in 1978, $2.90 in 1979, $3.10 in 1980, and to the current $3.35 in 1981. This Committee again received testimony from business organizations predicting significant job loss stemming from passage of the amendments. The U.S. Chamber of Commerce testified that the proposed minimum wage increase would result in about 2 million lost jobs. They offered as evidence a study providing a state-by-state breakdown of the lost jobs totaling 1,977,000 by 1980, if the minimum wage reached $3.15 an hour (the bill which passed reached $3.10 by 1980). The Chamber witness stated: "Rather than help a person who is now making $2.30 by raising the minimum wage to $2.65 or $3.00, you are hurting him because you put him out of work. So the minimum wage may be $3.00, but his wage is zero unless he can collect welfare, because his job is eliminated."

The Chamber testimony also calculated a first year job loss of 400,000, 387,000 of which would be teen-age jobs. Minority teen-age unemployment would increase almost 6% to 45% with a $2.65 minimum the first year.

One retailer testified that 5,800 of 29,000 convenience stores would have to close if the minimum wage increase became law. He

concluded: "The minimum wage increases contemplated by S. 1871 could sound the death knell for a large number of convenience food stores. It could force mass lay-offs and could cause some companies to completely go out of business."

Yet the following table demonstrates what the actual employment impact was:

Year	Impact minimum wage	Percent—			Total employment [1] (thousands)
		Increase	Unemployment	Youth unemployment	
1977	$2.30	0	7.1	17.8	88,734
1978	2.65	15	6.1	16.4	92,661
1979	2.90	9.4	5.8	16.1	95,477
1980	3.10	6.9	7.1	17.8	95,938
1981	3.35	8.1	7.6	19.6	97,030
1982	3.35	0	9.7	23.2	96,125

[1] Civilian, nonagricultural industries.

As the table indicates, total employment increased 8,296,000 1977–1981. The only decline in employment occurred in 1982, a year in which there was no increase in the minimum wage. Employment increased 3,313,000 in 1977, also a year in which there was no increase, and it increased 3,927,000 in 1978, the year a 15% increase of the minimum wage went into effect. Teen employment increased 382,000 in 1978, as compared to an increase of 352,000 in 1977 when there was no increase in the minimum wage. Minority teen unemployment declined 1.8% in 1978 when the minimum wage reached $2.65, instead of the almost 6% increase projected by the U.S. Chamber of Commerce testimony in 1977.

Contrary to the testimony projecting 5,800 of the 29,000 convenience stores closing if the minimum wage were increased, the number of convenience stores increased by 4,100 between 1977 and 1978, as compared to an increase of 2,000 between 1976 and 1977, when there was no increase in the minimum wage.

Retail employment also increased by 1,381,000 in 1977–1981. The only decline in retail employment was in 1982, a year in which there was no increase in the minimum wage. Retail employment increased in 1977 by 599,000, when there was no increase in the minimum wage, and by 765,000 in 1978, the year a 15% increase was in effect.

The 1977 amendments so created the Minimum Wage Study Commission to examine the impact of the FLSA. In the May 24, 1981 letter to the President and Congress accompanying the Commission's recommendations, the Commission Chairman termed the research "the most exhaustive inquiry ever undertaken into the issues surrounding the Act since its inception."

The Chairman of the Minimum Wage Study Commission concluded in the seven volume report:

> The evidence suggests that recent changes in the Fair Labor Standards Act have had relatively little impact on national unemployment levels and that the achievement of substantial decreases in unemployment (if they are achievable at all through amendment of the Fair Labor Standard Act) could be obtained only at the cost of a very large sub-

> sidy of employers in the fast food, retail and other low-wage industries by low-wage workers, or tax payers, or both * * *
>
> The purpose of the Fair Labor Standards Act was and is to establish a floor below which wages will not fall, a floor which is adequate to support life and a measure of human dignity. It is a laudable legislative effort to ensure a just wage in return for a day's labor * * *
>
> That the minimum wage has not brought us to the Earthly Paradise may be a disappointment, but it should not be a surprise. That it has provided a working floor below which wages would have gone in its absence and have not gone because of it, suggests that it has done what it was intended to do. May that be said of each of us.

1987 testimony

The Committee again received testimony and accompanying studies projecting significant adverse employment impact under S. 837. One study submitted by the U.S. Chamber of Commerce calculated that 1.9 million jobs would be lost by 1995 under S. 837 as originally introduced. This study concluded that through the first 3 years ($4.65) there would be a 550,000 decline in employment, 113,000 to 339,300 of which would be teen jobs, and a .4% increase in the unemployment rate.

Another Chamber of Commerce study received by the Committee concluded that through the same three years of the bill ($4.65), total job loss would exceed 750,000, 420,000 of which would be teen jobs.

Another witness presented the conclusions of a study commissioned by the Retail Industry Task Force, which calculated that at a minimum wage of $4.65, "882,000 people would lose their jobs, 364,000 from the retail industry."

CONCLUSION

These projections of job loss are consistent with the previous projections by business organizations and economists in opposition to earlier amendments to the Fair Labor Standards Act. Yet it is apparent from the employment and unemployment data following previous adjustment to the FLSA rate that the adverse employment consequences projected by these and other economic studies have never come to pass.

It is not surprising that the historic data on employment and unemployment do not support conclusions by economists plugging data into a model or a formula. Wage markets do not behave the same as commodity markets vis-a-vis the economists' stock in trade, supply and demand curves. As Dr. Adams testified before this Committee:

> We visualize the labor market as one that is highly fragmented, not like the market for wheat and corn and potatoes, but rather, it is an individual relationship between workers with very specific qualifications and their employer. And in such a fragmented labor market, certain work-

> ers fall behind, lack bargaining power, lack information and are unable to achieve a market wage.

Similarly, it would not surprise the original drafters of the FLSA that wage markets behave differently than commodities markets. The fundamental premise of those who authored the FLSA was that labor is *not* a commodity, and as a matter of public policy, should not be treated as such.

The differences between economic and business projections of adverse consequences and the subsequent actual employment data may have been best explained by Dr. Walter Galenson, in his testimony before this Committee in 1977:

> Economists are prone to make strong policy statements on the minimum wage, and one would have supposed that by this time, they would have had a firm supporting factual foundation. This is unfortunately not the case * * * . One of the difficulties with most of these studies is that they are based upon macroeconomic data, and that heroic assumptions are necessary in order to distill out the effects of economic developments that are occurring simultaneously * * * . The problem with arguments on both sides of the issue is that the major forces that determine the level of employment swamp any and probably minor effects that might be attributed solely to a change in the minimum.

Dr. Galenson's observations were supported in the hearings last Congress by Dr. Gerard Adams, who testified:

> I conclude by saying that our econometric estimates suggest that at worst, adjustment of the minimum wage to $4.65 an hour and indexing thereafter will have small effects on the GNP and employment and only moderate effects, up to .2% annually, on inflation. These are tiny, imperceptible differences, and they will be overwhelmed by small changes in any number of more important variables that affect our economy * * * .
>
> A ten cent increase in the price of gasoline will give you two-tenths of one percent on the inflation rate if you carry it through the model.
>
> A $10 billion change or reduction in government spending—$10 billion is not a larger number—would give you approximately the same impact on unemployment as we get here.

1989 testimony

On March 3, 1989 Secretary of Labor, Elizabeth Hanford Dole, presented the Bush Administration's position on the minimum wage. The Secretary stated that the President would support a moderate increase in the minimum wage, culminating in $4.25 in 1992 as long as the increase was accompanied by a six month subminimum wage provision for all "new hires". In addition the Secretary advocated an expansion of the current small business exemption and an increase in the tip credit.

Secretary Dole also commented on S. 4. She predicted that the bill would cause a decrease of 650,000 job opportunities and that the bill would do little or nothing to assist the working poor, youths, and minorities.

Several members of the Committee commended the Secretary and the President for presenting a proposal. The Chairman and several members also challenged the Secretary's testimony. They expressed their opinion that the 650,000 job loss estimates were unrealistically high and that the proposed subminimum "training" wage actually provided for no training and that it would set forth too long a period of subminimum employment. Two members noted that the Department of Labor has estimated that most minimum wage jobs require less than thirty days of training.

B. NEED FOR THE LEGISLATION

The minimum wage was last adjusted by Congress in 1977, with the current $3.35 an hour taking effect on January 1, 1981. In the ensuing eight years, the purchasing power of the minimum wage has declined almost 40%. The $3.35 an hour in effect in 1981 is only worth about $2.40 an hour in today's dollars. The minimum wage today represents 35% of the average hourly earnings, a decline from 46.2% in 1981, and from 55.4% in 1968. The original 25 cents an hour passed in 1938 represented a greater percentage of average hourly earnings than does $3.35 today.

In two-thirds of the states, basic welfare benefits provide greater cash income than does full time work at the current minimum wage. Opponents of the minimum wage point out that many minimum wage workers are not poor. The sad reality is that many of the poor cannot afford to work at the current minimum wage when not working can better enable these families to survive.

Although the Department of Labor could not provide the Committee with an updated breakdown of wage earners affected by the step increase contained in S. 1182, the data provided for the Committee by the Department for last year's bill should provide a rough guide as to how many workers would be affected by this bill and what some of their characteristics are.

According to Current Population Survey data provided to the Committee last year by the Department of Labor, there were over 14 million hourly workers earning less than $4.55 an hour. While women make up about 45% of the labor force, they represented over 63% of those who earned less than $4.55 an hour. Blacks and Hispanics also represented significantly higher percentages of these low wage workers than they did of the workforce in general. Contrary to the assertions that most of these workers were just teens, only 26% of those earning less than $4.55 were teen-agers. Of hourly workers 65 years of age and older, 39.5% earned less than $4.55 an hour.

Over 6.5 million of these low-wage workers were full time. Over 3.8 million were heads of households, and over 2.1 million of these were full-time heads of households. Of hourly workers within all families earning below the poverty level for a family of three, over 2.6 million earned less than $4.55 an hour, or 63% of all hourly workers in this category. Of hourly wage earners from families of

three below the poverty line, over 70% earned less than $4.55 an hour.

Passage of S. 1182 would provide a cash infusion of these millions of workers without expanding federal outlays. It would restore the minimum wage, badly eroded over the last eight years, to a level of closer to that maintained over the previous 50 years. By increasing the minimum to this $4.55, work in many states will be a more attractive alternative than welfare benefits.

For the working poor, this adjustment to the minimum wage is long overdue and will prove to be an enormous benefit. For those non-poverty workers laboring at the minimum wage, the increases will also prove to be a significant benefit. For example, teens and young adults attempting to meet college expenses have witnessed over a 75% increase in private college tuition and over a 60% increase in public college tuition since the minimum was adjusted in 1981. Seventy percent of middle-income students depend on their earnings for college expenses, and since 1981, students have had to increase their borrowing by over 40%.

Despite the assertion by President Reagan that "The minimum wage has caused more misery and unemployment than anything since the Great Depression", the historic data contradicts such notions. Restoration of the minimum wage by enactment of S. 1182 will in fact increase the earnings and reduce the misery of millions of American workers, with little or no discernible adverse impact on our economy.

C. STATISTICAL TABLES

Past Committee reports accompanying legislation to increase the minimum wage have included statistical tables provided by the Bureau of Labor Statistics and the Employment Standards Administration at the Department of Labor, which have proven to be useful references during previous deliberation and consideration of such legislation. The following tables have been provided by the Secretary of Labor, and the Committee extends its thanks to the Secretary for her cooperation and assistance:

TABLE 1.—ESTIMATED NUMBER OF EMPLOYED WAGE AND SALARY WORKERS IN THE CIVILIAN LABOR FORCE CLASSIFIED BY THE STATUS UNDER THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY INDUSTRY, UNITED STATES, SEPTEMBER 1988

[In thousands]

Industry division	Number of employed wage and salary workers in the civilian labor force				Number of nonsupervisory employees subject to the minimum wage provisions of the FLSA			Number of nonsupervisory employees not subject to the minimum wage provisions of the FLSA
	Total	Activities generally exempt under section 13(a)(1) of FLSA [1]		Nonsupervisory employees excluding outside sales workers	Total	Subject prior to the 1966 amendments [2]	Subject as a result of the 1966 and later amendments [2]	
		Executive, administrative and professional personnel	Outside salesworkers					
All industries	110,986	20,793	2,865	87,328	79,150	50,372	28,778	11,043
Private sector	93,186	13,691	2,865	76,630	68,452	50,372	18,080	11,043
Agriculture [3]	1,724	89	.....	1,635	628	.....	628	1,007
Mining	740	94	.....	646	642	642	.....	4
Contract construction	5,660	568	6	5,086	5,069	4,221	848	23
Manufacturing	19,726	2,300	399	17,027	16,945	16,841	104	481
Transportation and public utilities	5,665	645	7	5,013	4,988	4,912	76	32
Wholesale trade	6,241	888	1,059	4,294	4,270	4,011	259	1,083
Retail trade	19,387	1,939	177	17,271	15,157	7,659	7,498	2,291
Finance, insurance and real estate	6,706	971	1,166	4,569	4,349	4,179	170	1,386
Service industries (except private households) [4]	25,951	6,197	51	19,703	15,474	7,907	7,567	4,280
Private households	1,386	.....	.....	1,386	930	.....	930	456
Public sector	17,800	7,102	.....	10,698	10,698	.....	10,698	.....
Federal Government	2,968	556	.....	2,412	2,412	.....	2,412	.....
State and local government	14,832	6,546	.....	8,286	[5] 8,286	.....	8,286	.....

[1] Section 13(a)(1) exempts from the minimum wage and overtime provisions of the Fair Labor Standards Act ". . . an employee employed in a bona fide executive, administrative, or professional capacity (including any employee in the capacity of academic administrative personnel, or teacher in elementary or secondary schools), or in the capacity of outside salesman . . . ". Included are all employees in the specified activities whether employed in covered or noncovered establishments.

[2] Relates to currently employed workers who would have been subject under criteria in effect prior to the 1966 amendments.

[3] Estimates for agriculture are based on average employment for the 10-month active season. For July 1988, a peak employment period, the estimate for total hired farm labor was 2,037,000; for nonsupervisory employment, 1,937,000; for subject employment, 729,000.

[4] Estimates for educational services relate to October 1988.

[5] Estimated employment subject to the minimum wage reflects the February 1985 Supreme Court decision in Garcia.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 2.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS EXEMPT FROM BOTH THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY SECTION OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1988

[In thousands]

Section of the act		Estimate [1]
	Exempt from minimum wage and overtime	7,884
6(f) and 7(l)	Domestic service employees working 8 hours or less or with earnings too low to be covered by social security.	266
13(a)(1)	Outside salesworkers	2,865
13(a)(2)	Retail and service establishments	3,415
13(a)(3)	Seasonal amusement establishments	77
13(a)(4)	Custom manufacturing in exempt retail establishments	8
13(a)(5)	Catching and processing fish and seafood	16
13(a)(6)	Agriculture	1,024
13(a)(7)	Employees exempt under section 14	NA
13(a)(8)	Small newspapers	23
13(a)(10)	Switchboard operators of small telephone exchange	([2])
13(a)(12)	Seamen on foreign vessels	NA
13(a)(15)	Babysitters employed on a casual basis and companionship services	190

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.
[2] Less than 5,000 employees.
NA: Not available.

Note.—Sections 13(a) (9), (11), (13) and (14) have been repealed.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 3.—*Number of workers not subject to the minimum wage provisions of the Fair Labor Standards Act by industry, September 1988*

[In thousands]

All industries	[1] 11,043
Private sector	11,043
Agriculture	1,007
Mining	4
Contract construction	23
Manufacturing	481
Transportation and public utilities	32
Wholesale trade	1,083
Retail trade	2,291
Finance, insurance, and real estate	1,386
Service industries (except private households)	4,280
Private households	456
Public sector	.....
Federal Government	.....
State and local governments	.....

[1] Including 2,865,000 outside salesworkers.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 4.—NUMBER OF WORKERS NOT SUBJECT TO THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE INDUSTRY, SEPTEMBER 1988

[In thousands]

	Total	Partial exemption [1]	Full exemption or not covered [2]
All industries	16,354	1,094	15,260
Private sector	15,387	167	15,220
Agriculture	1,635	.....	1,635
Mining	10	.....	10
Contract construction	69	.....	69
Manufacturing	701	31	670
Transportation and public utilities	1,788	29	1,759
Wholesale	1,298	37	1,261
Retail trade	3,522	20	3,502
Finance insurance and real estate	1,387	.....	1,387
Service industries (except private household)	4,425	50	4,375
Private households	552	.....	552
Public sector	967	927	40
Federal Government	59	59	.....
State and local government	908	868	40

[1] Includes workers who are exempt from premium payment for overtime for part of the year or whose workweek standard exceeds 40 hours per week.

[2] Includes workers who are not covered or are exempt from overtime for the entire year. Includes 2,865,000 outside saleworkers.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 5.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS PARTIALLY EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE SECTION OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1988

[In thousands]

Section of the act		Estimate [1]
	Partial overtime exemption	1,094
7(b)(3)	Independent bulk petroleum dealers [2]	37
7(k)	Federal,State, and local fire protective and law enforcement activities (including security personnel in correctional institutions) [3].	927
7(m)	Tobacco handling and processing incidental to auction sale [4]	23
13(b)(29)	Private sector amusement or recreational establishments located in national parks, national forests, or National Wildlife Refuge System [5].	20
13(b)	Cotton and sugar service employees [4]	25
13(i)	Cotton ginning [4]	48
13(j)	Processing sugar beets, sugar beet molasses or sugar cane [4]	14

[1] Estimated number of nonsupervisory employees in categories in which exemption applies.

[2] At least 1½ times the minimum rate for hours in access of 40 per week and 1½ times the regular rate for hours in excess of 12 per day or 56 per week.

[3] 28 day work period with at least 1½ times the regular rate for hours in excess of 212 for fire protection activities and 171 for law enforcement activities.

[4] At least 1½ times the regular rate for hours in excess of 10 per day and 48 per week for a period of not more than 14 weeks.

[5] At least 1½ times the regular rate for hours in excess of 56 per week. Estimate excludes nongovernment employees providing services and facilities directly related to skiing who are exempt from the minimum wage requirements of the Fair Labor Standards Act.

NA Not available.

Note.—Sections 13(b) (25) and (26) have been repealed. Due to the nature of the exemptions, sections 7(j) and 7(o) were not included. Section 7(j), which applies to hospitals and nursing homes, permits a 14 day work period with at least 1½ times the regular rate for hours in excess of 8 per day and 80 per the 14 day period. Section 7(o), which applies to state and local governments, permits the use of compensatory time off in lieu of overtime at a rate of not less than one and one-half hours for each hour for which overtime compensation is due.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 6.—DETAILED ESTIMATES OF THE NUMBER OF WORKERS FULLY EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT, BY THE SECTIONS OF THE ACT PROVIDING THE EXEMPTION, SEPTEMBER 1988

[In thousands]

Section of the act		Estimate [1]
	Fully exempt from overtime only	4,221
7(i)	Commission salesworkers in retail or service establishments	560
7(n)	Charter activities of local transit employees	NA
13(b)(1)	Motor carriers	1,206
13(b)(2)	Railroads	291
13(b)(3)	Air transporation	457
13(b)(5)	Outside buyers of poultry, eggs, cream, or milk	([2])
13(b)(6)	Seamen	63
13(b)(9)	Announcers, news editors, chief engineers of small radio or television stations	26
13(b)(10)	Salesworkers, partsworkers, mechanics	670
13(b)(11)	Drivers and drivers' helpers paid on trip basis	([2])
13(b)(12)	Agriculture or irrigation	643
13(b)(13)	Farmworkers engaged in livestock auction operations	NA
13(b)(14)	Small country elevators in area of production	15
13(b)(15)	Processing maple sap into sugar or syrup	([2])
13(b)(16)	Transportation of farm products or farm harvesting employees	21
13(b)(17)	Taxicab drivers	21
13(b)(20)	Small fire protection or law enforcement agencies	40
13(b)(21)	Domestic service live-ins	96
13(b)(24)	Substitute parents for institutionalized children	NA
13(b)(27)	Motion picture theaters	75
13(b)(28)	Small loggers (less than 9 employees)	34

[1] Estimated number of nonsupervisor; employees in categories in which exemption applies.
[2] Less than 10,000 employees.
NA: Not available.

Note.—Sections 13(b), (4), (7), (8), (18), (19), (22) and (23) have been repealed.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 7.—RELATIONSHIP OF MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS, 1961–88

Year	Minimum wage	Ratio/AHE (percent)
1961 (September)	$1.15	49.1
1962	1.15	51.8
1963 (September)	1.25	51.8
1964	1.25	53.0
1965	1.25	50.8
1966	1.25	48.8
1967 (February)	1.40	51.9
1968 (February)	1.60	55.4
1969	1.60	52.6
1970	1.60	49.5
1971	1.60	46.4
1972	1.60	43.2
1973	1.60	40.6
1974 (May)	2.00	44.1
1975 (January)	2.10	46.4
1976 (January)	2.30	47.3
1977	2.30	43.8
1978 (January)	2.65	46.6
1979 (January)	2.90	47.1
1980 (January)	3.10	46.5
1981 (January)	3.35	46.2
1982	3.35	43.6

TABLE 7.—RELATIONSHIP OF MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS, 1961–88—Continued

Year	Minimum wage	Ratio/AHE (percent)
1983	3.35	41.8
1984	3.35	40.3
1985	3.35	39.1
1986	3.35	38.2
1987	3.35	37.3
1988	3.35	36.1
Average		46.0

Source: U.S. Department of Labor Employment Standards, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

TABLE 8.—RELATIONSHIP OF PROPOSED MINIMUM WAGE TO GROSS AVERAGE HOURLY EARNINGS OF PRODUCTION OR NONSUPERVISORY WORKERS IN PRIVATE NONFARM ESTABLISHMENTS

Period	Average hourly earnings (private non-farm)	Proposed minimum [1]	Percent
Calendar year:			
1988	$9.29		
1990	9.95	$3.85	38.7
1991	10.30	4.25	41.3
1992	10.66	4.65	43.6

[1] The first year increase of 50 cents an hour becomes effective Jan. 1, 1990, and is followed by two increases of 40 cents an hour effective Jan. 1, 1991, and Dec. 31, 1991.

Note.—Gross average hourly earnings for the years 1989–92 are projected on the basis of an annual increase of 3.5 percent.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Management, Administration and Planning, Division of Program Development and Research, Mar. 8, 1989.

IV. HEARINGS

The Committee on Labor and Human Resources held three days of public hearings on S. 837, a predecessor bill to S. 1182: June 10, 1987, July 17, 1987, and July 23, 1987. The following persons and organizations appeared as witnesses and presented oral and written testimony:

JUNE 10, 1987

The Honorable William E. Brock, U.S. Secretary of Labor, Washington, DC.

Ms. Rena Blankenship, New Castle, Virginia.

Ms. Shirley Slagle, Kittanning, Pennsylvania.

Mr. James G. O'Hara, Chairman of the Federal Minimum Wage Study Commission, Washington, DC.

Mr. Arthur Flemming, Citizen's Committee for a Just Minimum Wage, Washington, DC.

Mr. William Stone, U.S. Chamber of Commerce, Washington, DC.

Mr. Ronald Sarisin, Minimum Wage Coalition to Save Jobs, Washington, DC.

Ms. Virginia McCormac, President of Seattle Goodwill, Seattle, Washington.

JULY 17, 1987

Dr. F. Gerard Adams, Professor of Economics and Finance, University of Pennsylvania, Philadelphia, Pennsylvania.

Dr. David H. Swinton, Southern Center for Studies in Public Policy, Clark College, Atlanta, Georgia.

Dr. Finnis R. Welch, Professor of Economics, UCLA, Los Angeles, California.

Dr. John R. Glennie, Vice-President, Robert R. Nathan Associates, Inc., Washington, DC.

JULY 23, 1987

Mr. Lane Kirkland, President, AFL–CIO, Washington, DC.

Mr. Jay Mazur, President, International Ladies Garment Workers Union, New York, New York.

Mr. John Sweeney, President, Service Employees International Union, Washington, DC.

Mr. Jacob Scheinkman, President, Amalgamated Clothing and Textile Workers Union, New York, New York.

Mr. Mathew A. Runci, Manufacturing Jewelers and Silversmiths of America, Providence, Rhode Island.

Mr. Walter Ellis, Jr., President, New Jersey Farm Bureau, Trenton, New Jersey.

Mr. Douglas Fontaine, American Hotel and Motel Association, Pascagoula, Mississippi.

The following persons and organizations provided written testimony for the record during the course of the hearing:

JUNE 10, 1987

Barry, Hon. Marion, Jr., Mayor, Washington, DC.

Coalition of Automotive Associations (CAA).

Cooney, David M., Rear Admiral, USN (Ret.), president and chief executive officer, Goodwill Industries of America, Inc.

Keyserling, Mary Dublin, consulting economist, on behalf of the National Consumers League.

National Grocers Association.

National Small Business United (NSBU).

Roosevelt, James, former Congressman and chairman of the National Committee to Preserve Social Security and Medicare.

Schriber, G. Richard, president, National Automatic Merchandising Association.

Wilson, Donald T., director, government relations, National Tire Dealers and Retreaders Association.

JULY 17, 1987

Williams, Walter E.

JULY 23, 1987

American Jewish Congress.

Hotel Employees and Restaurant Employees International Union.

Joseph, Joel D.

National Federation of Independent Business.

Wynn, William H., international president, United Food and Commercial Workers International Union (AFL–CIO).

MARCH 3, 1989

An additional hearing was held on S. 4, another predecessor bill to S. 1182, at the request of several members of the Committee on March 3, 1989 to hear the views of the Administration as to the appropriate level of the minimum wage and the Administration's proposal on a "training" wage. The Honorable Elizabeth H. Dole, Secretary of Labor, presented the Administration views.

No additional days of hearings were held on S. 1182.

V. Committee Views

A. THE PROPOSED INCREASE IN PERSPECTIVE

The current minimum wage represents the lowest percentage of average hourly earnings since 1949. Over the fifty year history of the FLSA, Congress has adjusted the minimum wage to maintain a level roughly half of the average hourly wage in the economy. Today the federal minimum is equal to only 33% of the average hourly wage. According to the Department of Labor, the increases proposed in S. 1182 will bring the minimum to less than 42% of the average wage by 1992.

It is the Committee's view that these modest step increases, the first since the minimum wage was increased to the current $3.35 in 1981, are essential to restore the vitality of the FLSA and to improve the lives of millions of low wage workers. The historic evidence amply justifies the Committee view that the proposed increases will have no discernible adverse impact on the nation's economy.

For fifty years Congress has maintained and expanded this public policy of a wage floor below which no one should be paid. In the last fifty years this country has become the leading economy of the world, and has done so with this policy that no full-time worker should be condemned to a lifetime in poverty. The economic well-being of our nation's lowest paid workers has been the cornerstone on which much of our prosperity has been built, as well as the keystone of our political stability.

Restoring the lost purchasing power to the minimum wage will improve the lives of the 14 million of our nation's lowest paid workers, a disproportionate number of whom are women, blacks, and other minorities. The vitality of the American work ethic for our nation's low-wage workers is threatened when full time work does not enable those workers the measure of decency and dignity that is the promise of the Fair Labor Standards Act, and which is the essence of the American dream.

B. EMPLOYMENT AND UNEMPLOYMENT

The minimum wage debates have always contained assertions that increasing the wage will lead to increased unemployment and decreased employment. Yet, the historical record shows that in each year following an upward adjustment in the minimum wage,

except 1975 which was a recession year, employment has increased and in the great majority, unemployment decreased.

[In percent]

Year	Increase in minimum	Unemployment—	
		Before	After
1949	87	5.9	5.3
1955	33	4.4	4.1
1961	15	6.7	5.5
1966	30	3.8	3.6
1974	25	5.6	7.6
1977	10	7.1	6.1
1982	0	7.6	9.7

More recent evidence against claims that the minimum wage causes unemployment is provided by the experience of states that have raised their minimum higher than the federal minimum. Since 1981, thirteen states have raised their minimum wage above the federal wage, yet, in all these states, except Alaska during the recession year of 1982, employment increased and unemployment decreased.

During the consideration of minimum wage legislation last Congress, the Committee received three major studies on the job loss impact of raising the minimum wage: Nathan Associates, National Chamber Foundation, and the Wharton based analysis of the Economic Policy Institute. These were presented in the June and July 1987 Senate hearings on amending the Fair Labor Standards Act of 1938.

These studies were based on the original 1987 Senate bill which contained increases to $3.85, $4.25, $4.65, and 50% of the average wage in 1991 (according to DOL projections approximately $4.95 in the fourth year).

The study by the National Chamber Foundation is the most unreliable of the four mentioned. It relied on the outdated statistical relationships summarized by Brown, Gilroy, and Kohen in their 1982 publication concerning the employment effects of the minimum wage. The study also failed to account for the declining percentage of the workforce made up by minimum wage workers, ignored the decline in the supply of teenage and young adult labor, and did not consider states which have increased their state minimum wage above the federal minimum wage.

The Chamber study presented in their 1987 testimony relies on a formula which links a 10% increase in the minimum with a 0.5% to 1.5% decrease in teenage employment. Yet this relationship was determined over the period of the mid 1950's to the late 1970's, a time when the minimum wage was, on average, about one half of the average wage. Today the minimum wage is only about 33% of the average wage. This larger gap between the minimum and the average wage renders the old relationship invalid. In his 1987 testimony Dr. F. Gerard Adams pointed out that "the larger the gap, the fewer individuals directly affected by the increase in the minimum wage and the less the impact on the average wage. Moreover,

the larger the gap, the less is likely to be the impact of the ripple effect, as other wages are adjusted in sympathy."

There is another reason why the relationship relied upon by the Chamber is no longer valid. David Luskin, while working at the Department of Labor, presented a paper in which he conducted the statistical analysis relied upon by the Chamber. Luskin, however, incorporated the changed demographics and the lower relative minimum wage. He found that given this new data there was, for the most part, no longer any statistically significant relationship between an increase in the minimum wage and a decline in employment. What this means is that one can no longer rely on the outdated conclusions of the previous studies. His results are not surprising given that there will be over 1.5 million fewer teenagers and young adults in this country by 1991. With labor force participation rates of 54% and 77% respectively, there will be nearly 500,000 fewer teens (16–19 years) and almost 600,000 fewer young adults (20–24 years) in the labor force by 1991. The Chamber conclusion, that as a result of the minimum wage increase there will be 750,000 fewer jobs after the first three years, is neither supported by historic experience nor the experience of states with higher minimums. However, there may well be fewer teens employed, not due to the minimum wage, but due to the fact that there will be over 1,000,000 fewer young workers aged 16–24 by 1991.

The conclusions of John Glennie of Nathan Associates similarly ignore the minimum wages of states, the supply of teenage labor, the percentage of the workforce employed at the minimum wage, and the questionable "consensus" outlined previously regarding the relationship between raising the minimum wage and the loss of jobs. The methodology by which Mr. Glennie reached his conclusions was not available in his prepared statement. However, in his verbal testimony Mr. Glennie indicated his reliance on "the body of economic literature" for his conclusion. There is little doubt that he was referring to the economic consensus expressed by Brown, Gilroy, and Kohen in their 1982 article regarding the effect of an increase in the minimum wage on employment. Yet, it is this very literature which is no longer valid given the larger minimum wage gap, the changed demographics, and the falling percentage of the workforce made up of minimum wage workers.

The conclusion of Dr. F. Gerard Adams on the results of the Wharton model analysis of S. 837 are the least inaccurate of the three studies. The Wharton model is one of the best known models, and has been relied upon extensively by a great number of government agencies and businesses over the last twenty years.

The Wharton model estimated a .05 percentage point increase in the unemployment rate, if the wage were increased to $4.65 by 1990. In terms of today's labor market, .05% unemployment would be approximately 50,000 to 60,000 jobs. The study did not formally address the question of jobs not created, but Dr. Adams estimated the effect on employment to be what amounts to between .086% and .17% of the current labor force.

There are two observations which should be kept in mind. First, these figures include indexing which would raise the minimum to $4.95 in 1991. The bill under consideration would raise it to only $4.55 with no indexing. Second, given the real wage gains to 14 mil-

lion (13% of the labor force) making less than $4.55 an hour, the estimated number of jobs not created is a relatively small price to pay. The small number of jobs which might not be created, moreover, is dwarfed by the projected increases in the labor force. According to the Congressional Budget Office, the labor force will grow by 4.6 million between 1988 and 1991. The job loss the Wharton study attributes to the minimum wage increase represents between 2% and 4% of the growth.

Yet, as reported in Business Week, October 19, 1987, even the Wharton estimate of job loss is too high. This Business Week analysis, which describes the common flaws of all the macroeconomic model estimates of job loss, notes that, "the fewer minimum wage jobs there are, the less impact on employment if the minimum wage rises." In fact, the number of people working at or below the minimum wage has come to represent a smaller and smaller percentage of the hourly workforce, from 15% in 1981, to 8.8% in 1986, to 7.9% in 1987, to less than 5% today.

At the request of the Chairman, the Congressional Budget Office provided the Committee with an estimate of employment impact under last year's bill. CBO based its estimate on a review of available economic studies, and estimated the bill would reduce employment through 1991 a few tenths of one percent, or approximately 175,000 to 350,000 jobs.

As CBO noted in its letter last year to the Chairman, "any attempt at quantifying the employment impact of increases in the minimum wage is subject to a wide margin of error. If anything, such estimates are now even more uncertain than usual because of special circumstances."

The special circumstances not taken into account by CBO in arriving at its quantitative estimate include the following factors. CBO did not account for the increase of the small business exemption to $500,000 in gross sales. Nor did CBO quantitatively subtract from their estimate the jobs in the jurisdictions in which the minimum wage already exceeds the federal minimum, and in most cases exceeds the first year or two of the proposed rates contained in the legislation. Other factors not accounted for in the numerical estimate of job loss include the significant decline of the teen and young adult population between now and 1992, and the continued decline in the percentage of hourly workers who are paid the minimum.

Finally, the CBO did not take into account other mitigating factors on the Wharton estimate given the two year lag in the effective date of the increases, the lower rates established by S. 1182, and the inclusion of a training wage provision.

All these estimates and projections of employment loss must be put in both their historical and current contexts. First, the actual impact of past increases never matched the economists' projections.

Second, even if the current projections are assumed to be correct, they must be applied in the context of the projections for the labor force and for employment growth. The Department of Labor projects that labor force growth will not keep up with projected job growth through 1992. Even assuming the most extreme projections of job loss, the economy will be creating more jobs than workers in

each year of the proposed increase in the minimum wage contained in S. 1182.

Put in the context of teens and young adults, the focus of concern for many opponents of the minimum wage increase, the numbers are more startling. Even if 80% (280,000) of the "lost jobs" projected by CBO were for teens and young adults (16–24), by 1992 there will be more than a million less 16–24 year olds. Hence, demand for 20–24 year olds would outstrip the supply of these young workers by over 800,000.

This youth labor shortage has not gone unnoticed by low-wage employers. In a study conducted by Arthur D. Little Inc. for the National Restaurant Association, A.D. Little concluded that due to these demographic changes, the food service industry alone will face a potential labor shortage of 1.1 million workers by 1995.

C. INFLATIONARY IMPACT

Many critics of the minimum wage argue that it fuels inflation and that workers who benefit from the increase in the minimum wage will receive no real gain due to the increase in the price of the goods they purchase. This of reasoning is incorrect and ignores a number of important points.

The Congressional Budget Office summarized estimates of this inflationary impact from the results of the Minimum Wage Study Commission and the work of Dr. F. Gerard Adams. The impact is assumed to be between .2 and .3 percentage points per year. Dr. Adams likened this to the system wide effects of a 10 cent increase in the price of gasoline.

This estimate is high for many of the same reasons that the job loss estimates were overstated. For example, since the gap between the current minimum and the average wage is much greater than it was when these estimates were made, the impact today would be less. A lower minimum wage, in relation to other wages in the economy, means a lesser inflationary "ripple" effect on these other wages as some are adjusted to maintain wage differentials.

Because the proportion of minimum wage workers has been falling, the inflationary impact of the minimum wage will be diminished. Common sense dictates that the fewer workers there are at the minimum wage, the less will be the increase in labor costs and prices resulting from higher payments to minimum wage workers.

With fewer teenage and young adult workers, employers would have been forced to bid up wages anyway to attract the scarce labor. Of course, one of the problems with a fragmented labor market and one of the reasons behind the need for a federal wage floor is that there would be many disadvantaged workers who would not benefit from those pressures to raise wages. But there would be a good number of workers currently at or near the minimum wage whose bargaining power would be increased by this restriction in labor supply.

Many of the workers who would receive increases under S. 1182 are in health care and nursing home occupations. Despite the potential impact of Medicaid rates paid to long term care providers, CBO did not estimate this impact translating into additional costs to the federal government. Individual states have rate-making au-

thority for nursing home care under the Medicaid statute, and states are required to make assurances to the Secretary of Health and Human Services that their rates are "reasonable and adequate". Section 1902(a)(13) of the Social Security Act requires states take into account the costs that nursing homes must incur to provide care and services in conformity with all applicable state and federal laws. Although the FLSA is not referred to specifically in that provision, the Committee recognizes that wage levels required by the FLSA meets the scope of federal statutes which must be taken into account under this section of the Social Security Act.

D. MINIMUM WAGE WILL HELP THE WORKING POOR

The Committee strongly disputes the arguments of the opponents of this legislation who claim that the bill will have little impact or a negative impact on the working poor. The proposed increase in the minimum wage will have a dramatic positive impact on the working poor. A recent study by Ronald B. Mincy of the Urban Institute, published in May of 1988, estimates that if the minimum wage were increased to $4.65, with current levels of coverage and compliance, the poverty gap (the difference between the actual incomes of the poor and the poverty level) would decrease by 14%, and the reduction in the number of poor families with low-wage workers would be 9.3%. This would mean a decrease of 206,000 in the number of poor families with a low wage worker. This decrease in poverty takes into consideration the mid-range disemployment effects.

This decrease in poverty among the working poor is especially important when we consider that the numbers of working poor have increased dramatically since 1978. In fact, the number of people who worked full-time year-round but remained poor grew 43% between 1978 and 1987. Two things are clear: the working poor will benefit a great deal from this legislation, and the working poor are far more numerous and in need than they were when we last raised the minimum wage. The problem of the working poor, those Americans struggling to stay off welfare and work for their living, will be addressed, at least in part, by S. 1182.

E. MINIMUM WAGE AS A WORK INCENTIVE

The Committee intends that the proposed increase in the minimum wage will have positive effects even on those not currently employed. The Committee projects that increasing the minimum wage will provide increased incentive for individuals receiving public assistance to leave the welfare rolls and take employment.

The basic tenets of economics suggest that if we want to encourage individuals to accept one form of support (work) over another form of support (welfare or other forms of public assistance) the way to make that happen is to increase the rewards related to work. The Committee believes that this means "making work pay." Certainly this is the premise of the Earned Income Tax Credit.

While some might be tempted to argue that the reverse is true—that we ought to decrease welfare payments—this approach has already been tested. Real AFDC benefits have declined 23% between 1978 and 1988, but poverty increased dramatically over this same

period (from 11.4% in 1978 to 13.5% in 1987). In 1989 the maximum combined AFDC and food stamp benefit for a family of three was lower than the poverty threshold in all but two states. Decreasing public assistance payments to American families would almost certainly lead to an increase in homelessness and an increase in already troubling rates of hunger and malnutrition among this nation's children. Decreasing public assistance benefits is not an option, but increasing the benefits that accrue to one who works is an option, and is good policy. The Committee recommends the proposed increase in the minimum wage, not only as a means of lifting working families out of poverty, but also as a means of inducing welfare recipients to choose work as an alternative to welfare.

F. SMALL BUSINESS THRESHOLD TEST

It is the view of the Committee that this increase in the minimum wage to account for the eroded value of the wage should be accompanied by a commensurate increase in the small business dollar threshold for coverage. Under S. 1182, the test for small business enterprises is altered to a more uniform $500,000 in gross annual sales, eliminating several of the separate tests. Existing provisions regarding public agency coverage and family business coverage remain unchanged from existing law. This change is almost identical to that which was requested by the Administration.

The new provision would continue the current wage, overtime, and child labor protections for workers previously covered under the separate tests, and would bring into coverage by the Act an approximately equal number of employees exempted by a separate provision of the Act.

It is the Committee's view that this more streamlined version of a threshold test, accompanied by the continued protection of workers currently covered and the elimination of the separate higher tests elsewhere in the Act, goes a long way in simplifying this section of the Act. Small business will be afforded an increase in their threshold test commensurate with the increase in the minimum wage.

G. PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SOMOA

In section four, the Virgin Islands are brought to the full mainland rate, and American Samoa continues to be subject to the industry committee mechanism of the Act. For the first time in the history of the Fair Labor Standards Act, a substantial majority of workers in Puerto Rico (including approximately 60% of workers in manufacturing industries) will be brought to full inclusion in the increases specified for the U.S. generally in Section 6(a)(1). All hotel and restaurant workers, and all other workers in industries where the average hourly wage is $4.65 or higher, will receive the increases on the same schedule as other U.S. workers. No extended phase-in provisions, as were included in both the 1974 and 1977 Amendments, are provided for these employees.

Special Industry Committees, which have been a feature of the Act since 1938, are eliminated entirely with respect to Puerto Rico

and the U.S. Virgin Islands. Authority for these committees, and for the promulgation of wage orders at less than the Section 6(a)(1) rates, is retained only for American Samoa. However, the Puerto Rico Minimum Wage Board was recently granted authority to raise wages above the federal minimum, which it already has done in several industries, and this amendment does not preclude further increases by this Board to levels above those federal rates.

Employees in very low wage industries (where average wages are well under one-half of the U.S. average), will be guaranteed full inclusion in the Section 6(a)(1) rates under a schedule tailored to their particular circumstances, as follows:

For industries in which the average hourly wage is between $4.00 and $4.65, the full section 6(a)(1) rate ($4.55 in S. 1182) will be delayed two years, to take effect on October 1, 1993. In each of the intervening years, beginning on October 1, 1989, the employees will be guaranteed increases in equal cents per hour amounts, rounded to the nearest five cents.

For the lowest wage industries, those where the average hourly wage is less than $4.00, the full increase will be delayed three years, to take effect on October 1, 1994 with equal increases each year beginning October 1, 1989. With respect to certain public employees, including those of Puerto Rico's Municipalities, brought under coverage by Public Law 99–150 and subject to the same less than $4.00 per hour average wage ceiling, the phase-in period will be extended by one additional year, to take effect on October 1, 1995. Again, the full rate will be phased in through equal annual increments beginning October 1, 1989.

For any industry to qualify for an extended implementation period, Puerto Rico must furnish official survey data substantiating that the industry's average hourly wage is below the $4.65 or $4.00 threshold levels specified in the substitute amendment. At the present time, the only such data available are produced in Puerto Rico's annual Census of Manufacturing, but the government intends to collect additional data where appropriate. In these industries, wage data should be at a level of specificity comparable to the four digit Standard Industry Code (SIC) code level, consistent with the average hourly earnings data published by the Department of Labor. For other industries, wage data will be based upon surveys which, to the extent practicable, will be at a comparable level of specificity, consistent with the method by which such survey data are regularly furnished by States and the Commonwealth to the Department of Labor.

Such data must be compiled and submitted for review to the federal Department of Labor by the effective date of this Act to qualify for any of the extended compliance periods.

In light of the time constraints imposed by these considerations, the managers direct the Secretary of Labor to assist the Commonwealth with the collection and compilation of wage data, including the design of a sampling plan which can be accomplished within available sources.

For purposes of the public employees described in section 4(c)(4) of the bill, the average wage to be considered is for specific categories of employment in distinct entities of the Commonwealth or its

municipalities, or for specific employment classifications, such as non-supervisory maintenance, clerical, and groundskeeping.

H. TIP CREDIT

The Committee adopted an amendment which would increase the tip credit provision of the Act from the current 40% to 45% in the first year of the minimum wage increase and to 50% thereafter. This amendment will not result in a decrease in the statutory minimum for any tipped employees, although it will result in a significant reduction in their increase relative to other employees. Under current law, the statutory minimum for tipped employees would have gone from current $2.01 an hour to $2.73 by October 1, 1991. Under the provision adopted by the Committee, the statutory minimum will go from $2.01 an hour to $2.33 on October 1, 1991.

I. TRAINING WAGE

Section 6 of S. 1182 provides for a training wage for workers with little or no experience. An inexperienced worker may be paid the lower rate ($3.35 or 85 percent of the applicable section 6(a)(1) rate, whichever is higher) while receiving on-the-job-training for the first 60 days of their cumulative work experience. This section specifies that on-the-job-training should last at least 30 days. The committee recommends that short-term job designed to last less than 30 days should be presumptively ineligible for the training wage.

This section contains safeguards and remedies for the displacement of existing employees for the purpose of hiring at the lower rate, and no employer may pay the lower rate for more than 25% of the hours worked in the establishment. All employees to be paid the lower rate must be provided with a notice prepared and distributed by the Secretary of Labor of their rights and remedies, and the training wage will be enforced through the existing provisions of the Act. Migrant and seasonal farmworkers and non-immigrant aliens admitted to perform temporary farm labor under the (H)(ii)(a) program are not eligible for the training wage.

Section 6(d)(2) prohibits displacement of current employees for purposes of hiring individuals at the subminimum training wage. Employees displaced in violation of this section shall have the same remedies available to employees displaced under section 15(a)(3) of the FLSA. In addition, the Secretary must disqualify any employer found in violation of section 6(d)(2) from employing individuals at the subminimum wage.

Section 6(e) provides that each employer and any employee who is being paid the subminimum be provided with written notice of the training wage requirements and remedies. Employees who may be potentially displaced in violation of this section also should be informed of their rights and remedies. The committee expects the Secretary of Labor to ensure that such information is available to displaced employees.

The individual is responsible for providing the requisite proof of previous employment durations, and an employer's good faith reliance on proof provided by the individual is a defense to a charge that the employer violated the 60 day limitation on eligibility.

The Secretary shall issue regulations defining the requisite proof required, and the committee urges the Secretary to provide that an accurate list of previous employers with the dates and durations of employment would satisfy the proof standard to be met by the individual. The Secretary shall also report to Congress on the effectiveness of this provision in providing inexperienced workers with actual training and employment opportunities, on the nature and duration of such training, on the extent of the utilization of the lower rate by employers, and on any adverse impact on ineligible employees resulting from the hiring of others at the lower rate.

Proponents of the training wage argue that a reduced wage for a limited period of time is a necessary inducement for employers to hire unskilled workers and that the training period is necessary to provide such workers with the minimal skills needed to perform productive work. In acquiescing to a training wage, the committee firmly believes that the period authorized for a reduced wage should be used for real training that enhances the skills, productivity and future employability of the employee. This section incorporates a definition of the term "on-the-job training" which has been the Department of Labor's operative definition for "on-the-job training" provided under Federal job training programs included in the Comprehensive Employment and Training Act and included by reference in the Job Training Partnership Act. The Department's long experience in the application of this term should facilitate the administration of the training wage provision.

The bill adds "personal skills" as one of the elements which must be provided as part of "on-the-job training". The committee notes that inculcation of personal skills such as appropriate dress and demeanor, punctuality and other work habits must be accompanied by technical and other job related skills training in order to be in compliance with the requirements of this section.

The committee has serious reservations as to the efficacy of a training wage in either increasing actual training or increasing employment opportunities. Nevertheless, largely as an accommodation to the Administration's insistence on a training wage, the committee is willing to authorize this provision on a trail basis, and will closely examine the results of the studies, the enforcement data, and the report by the Secretary of Labor as to the impact of this section.

Recent work by the General Accounting Office and Congressional Oversight persuade the managers that adequate enforcement of the training wage will not be possible unless the Wage and Hour division receives significant new resources. The committee strongly urges the Secretary to seek funds for the necessary additional enforcement personnel.

In addition, the committee urges the Secretary to undertake a review of Wage and Hour regulations to determine whether current record-keeping requirements and enforcement procedures are sufficient to adequately prevent illegal exploitation at the subminimum wage.

J. REMEDIAL EDUCATION

Section 7 the bill provides that up to 10 hours in the work week will be exempt from the overtime provisions of the Act for periods during which the employee receives remedial education. The exemption applies only to employees lacking a high school diploma or eighth grade basic skill levels, and only if the education is designed to provide those basic skills, and does not include job-specific training.

It is the view of the committee that this limited exemption should encourage employers to provide remedial education where needed, and that such education is necessary and would benefit some segments of our workforce and the competitiveness of their employers. To be of maximum benefit to both the employer and the employee, such remedial education is to be conducted during discrete set aside time periods, and to the extent practicable, away from the normal work stations of the employees.

K. CONGRESSIONAL EMPLOYEES

Section 8 of the bill incorporates sections providing for coverage by the Act for the employees of the House and the Senate, as merged in the conference agreement on S. 4. The Senate provisions contains a resolution that the Senate Rules Committee shall, within 180 days of the effective date of the first increase, report to the Senate a resolution which applies the FLSA rights and protections to Senate employees, and which establishes the scope, coverage, remedies and enforcement mechanisms necessary to effectuate those rights and remedies.

The House provision directly applies the FLSA rights and protections to House employees and employees of the Architect of the Capitol, to be administered through the Fair Employment Practices Resolution.

L. INCREASED CIVIL PENALTIES

Section 9 of the bill provides for civil penalties of up to $1,000 for repeated or willful violations of the minimum wage, overtime, and other provisions of the Act. It is the view of the committee that this will serve as a deterrent to flagrant disregard for the Act.

M. REGULATION CHANGE FOR CERTAIN EMPLOYEES

Section 10 of the bill directs the Secretary of Labor to promulgate regulations that interpret the professional exemption in a manner that permits computer system analysts, software engineers, and other similarly skilled computer professionals to qualify under that section, but only if such employees are compensated at an hourly rate at least six and one-half times the wage rate described in section 6 of the FLSA.

The committee intends this to be a narrow exception, one necessitated by recent changes in the tax code and a lack of updating in the regulations regarding professionals. The committee also is concerned that the salary tests in these regulations have not been adjusted since 1975. When the Secretary of Labor adjusts these tests,

this level of six and one-half times the minimum wage should serve as a guide as to the appropriate levels for the salary tests.

The committee has been made aware of changed circumstances in the personnel placement industry. That industry places people in jobs and compensates its consultants primarily through commissions. In 1941, the Secretary of Labor determined that personnel placement firms were not "retail or service establishments" for purposes of the Fair Labor Standards Act. That determination was consistent with then-current concepts of interstate commerce and the functioning of the personnel placement industry, and was sustained in Federal court. Since 1941, there have been changes both in the understanding of interstate commerce and in the evolution of the personnel placement industry. Accordingly, the committee urges the Secretary of Labor to reexamine whether personnel placement firms should be treated like other service establishments under section 7(i) of the Act.

N. STUDIES AND SURVEYS

Section 11 of the bill provides that the Minimum Wage Review Board shall contract with the Secretary of Labor and Bureau of Labor Statistics for studies of: the impact of the minimum wage on rural areas and high unemployment areas; characteristics of minimum wage employment; impact of the changes in the Act by this conference agreement provisions regarding the enterprise test, tip credit, and training wage; compliance and methods of enforcement of the Act; impact of the increase in the wage on public assistance, family life and family formation; the stimulative economic effect of the increase.

It is the view of the committee that these studies are essential to provide the necessary factual foundation for the Minimum Wage Review Board to base its recommendations for further adjustments in the rate, and for Congress to act on those recommendations. During the course of the debate on this minimum wage legislation, widely disparate facts and studies have been cited as to the economic and employment consequences of increasing the minimum wage. The completion and availability of these studies should serve the Congress well in providing the basis for informed debate.

O. THE ADMINISTRATION'S POSITION

On March 3, 1989, Secretary of Labor Elizabeth Hanford Dole presented the Bush Administration's position on the minimum wage. The Administration's position, as presented in the Secretary's testimony, is:

> An increase of 26.8% over three years, that is, 30 cents a year to an ultimate $4.25 and no higher;
>
> A meaningful training wage that would apply universally to all new hires, whether or not this is their first job, for six months at the $3.35 level of the current minimum wage;
>
> Liberalizations of the current tip credit (from 40% to 50%) and small business exemption (from $362,500 to $500,000, which should be extended to all businesses, not just retail and service establishments).

It is the Committee's view that the Administration's proposal is seriously deficient in several respects. First, the level of $4.25 is too low. Since 1981, there has been over 40% erosion of the purchasing power of $3.35, and increases less than this percentage would actually be a reduction in the real minimum wage.

A more disturbing aspect of the Administration proposal is their "training wage." The Administration proposes that employers be granted the discretion to pay a subminimum wage, of $3.35, to all new hires for a period of six months. It is unclear as to why the Administration refers to this subminimum as a "training" wage" the subminimum would require absolutely *no* training, it would apply to industries that offer little or no training, and it would apply to employees who have already been trained in the skills required to perform their jobs.

The Department of Labor provides detailed data on training time periods for thousands of occupations in their Dictionary of Occupational Titles. Almost all of the occupations found at or near the minimum wage require training periods of no more than thirty days. Recently the General Accounting Office criticized JTPA for granting training contracts for dishwashers, food service workers, custodians, and laundry workers at twice the DOL recommended 30 day periods.

The Committee is concerned that a six month subminimum option would give substantial economic incentive to pay new employees at the subminimum wage regardless of their skills or abilities, without the remotest relationship to actual training provided or necessary.

Another concern is raised when one considers the turnover rate in most minimum wage jobs. It is the Committee's view that many of the minimum wage workers change jobs more often than every six months. For example, the fast food industry, which employs millions at or near the minimum wage, has an annual turnover rate in excess of 300%. Under the Administration proposal, the average worker in these or many other minimum wage jobs would never receive the proposed increase.

Finally, the Administration's subminimum wage provision would, the Committee believes, provide substantial incentive for employers to cause unnatural turnover; that is that employers might fire employees or cause such employees to quit at or near the expiration of the six month subminimum wage eligibility.

P. THE ADMINISTRATION'S JOB LOSS ASSUMPTIONS

In her testimony before the Committee, the Secretary presented the Department of Labor's assumptions about job loss under S. 4, the predecessor bill to S. 1182 vetoed by the President. These assumptions are seriously flawed and must be called into question.

The Secertary stated that S. 4 would result in the loss of 650,000 job opportunities. That estimate was based on the assumption that a 10% increase in the minimum wage would result in a 2% decrease in job opportunities for teenagers and a 0.25% decrease in jobs for young adults. These assumptions are overstated and outdated.

The assumptions are based on a range of studies, some dating back to the 1960s. The Minimum Wage Study Commission established by Congress did, in fact, review various studies and established a mid-point job loss estimate based on these studies. However, the Commission's own economists found that a 1% (not the 2% assumed by DOL) decrease in job opportunities was more realistic. Moreover, the Commission only used data collected through 1979. Data is now available through 1986.

Under the direction of Professor Charles Brown, one of the Commission's original economists, Alison Wellington of the University of Michigan has replicated the Commision's work using the data updated through 1986. The Wellington study estimates that teenage job loss associated with a 10% increase in the wage would equal .6% and that the wage increase would have no significant effect on the employment of young adults (ages 20–24).

In addition to using outdated disemployment effect estimates, the Administration ignored the relationship between the minimum wage and the average wage. In virtually all job loss studies, the accepted methodology is to estimate the impact on the change in the minimum relative to the average wage. The Labor Department made its job loss estimates based on the dollar increase of the minimum wage—not on the increase relative to the average wage, inflating the figue by some 83%.

The Center on Budget and Policy Priorities has estimated that the job loss resulting from S. 4, utilizing the current disemployment effects and the 21.2% increase (following the adjustment method used by the Congressional Budget Office), is 90,000—much lower than the estimates offered by the Department of Labor. It would be an even lower figure applied to S. 1182, with the lower top rate and the training wage provisions.

Even this number of lost job opportunities is too high. First of all it does not consider the proposed increase in the small business exemption. Secondly, and most importantly, the estimate does not take into consideration the fact that 13 states (and the District of Columbia) have already increased their state minimum wages above the federal level. This state initiative will reduce or virtually eliminate the job loss effects of S. 1182 in these states.

In her oral testimony, the Secretary of Labor criticized the Wharton macroeconomic model simulation results Dr. Gerard Adams provided for the Committee last Congress on the impact of a $4.65 an hour minimum wage. Her criticism claimed that macroeconomic models do not factor in all the variables necessary in calculating job loss. Fortunately, Dr. Adams also provided the Committee with regression analysis to test the model simulation, and came up with "largely compatiable results" (testimony of Dr. Adams before the Committee, July, 1987). And, as noted earlier in this section, Business Week found the Wharton model's estimates of job loss too high due to other variable not factored in.

In summary, the Committee finds that the Administration's job loss estimates are severly overinflated. According to the most recent data and relevant information, job loss resulting from S. 1182 will be less than 15% of the job loss projected by the Administration.

VI. Committee Action

The Committee on Labor and Human Resources met on August 2, 1989 to consider S. 1182, the Fair Labor Standards Amendments of 1989.

The Committee voted to adopt and report S. 1182, by voice vote.

VII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 3, 1989.

Hon. Edward M. Kennedy,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1182, the Fair Labor Standards Amendments of 1989, as ordered reported by the Committee on Labor and Human Resources on August 2, 1989. We estimate S. 1182 would result in no direct costs to the federal government. There is the potential for increases in federal contracts and certain other federal programs, but data limitations preclude estimating the amounts. Finally, the bill would establish a Minimum Wage Review Board and require the Board to develop several studies in conjunction with the Department of Labor. We estimate that the costs of the Board and of the studies would be $675,000 in fiscal year 1991, $975,000 in fiscal year 1992, and in fiscal years 1993 and 1994 the estimated cost would be less than $300,000. These costs are subject to future appropriations.

S. 1182 would increase the minimum wage in three steps between now and September 30, 1991. The new levels would be not less than $3.85 an hour for the year beginning October 1, 1989; not less than $4.25 an hour for the year beginning October 1, 1990; and not less than $4.55 an hour after September 30, 1992.

The bill also would (1) establish a Minimum Wage Review Board, (2) apply the Fair Labor standards Act to Congressional Employees, (3) change the minimum wage guidelines for Puerto Rico, the Virgin Islands and American Samoa, (4) increase the tip credit of the applicable minimum wage from 40 percent to 45 percent of the applicable minimum wage rate during the year beginning October 1, 1989, and to 50 percent of the applicable minimum wage rate after September 30, 1990, (5) establish a training wage for on-the-job training of not less than $3.35 an hour during the year beginning October 1, 1989 and not less than the greater of $3.35 an hour or 85 percent of the minimum wage thereafter, (6) allow an employer to employ an employee for a period of not more than 10 hours (in any work week) in excess of the maximum workweek specified without paying overtime compensation if during such period the employee is receiving remedial education, (7) allow the Minimum Wage Review Board to enter into contract with the Secretary of Labor to provide for several studies and surveys to be conducted by the Bureau of Labor Statistics. These studies would include a study of the impact of increasing the federal minimum wage in rural and high unemployment areas, and surveys and re-

search on the characteristics of workers receiving the minimum wage levels under the Fair Labor Standards Act as amended.

Federal Government. Increasing the minimum wage could increase the administrative and enforcement caseloads within the Wage and Hours Division of the Employment Standards Administration at the Department of Labor. While this could result in higher costs to the federal government, there is no data available for estimating the increase.

To the extent that federal contractors use minimum wage labor, federal costs could increase as a result of enactment of S. 1182. However, there is no data available with which to estimate this effect. Increases in the minimum wage may also affect service levels in several federal programs because participants' pay is based on the minimum wage. Programs that may be affected are the Summer Youth Employment program, Community Service Employment for Older Americans, and the College-Work Study program. In these programs, the increase in wages might have to be offset by lowering the number of participants.

S. 1182 establishes the Minimum Wage Review Board to advise Congress on setting the minimum wage after September 30, 1992. Salary, travel expenses and per diem allowances for the five board members, and salary and overhead costs for an executive director and staff are authorized, although no specific authorization level is stated in the bill. We estimate these costs would be less than $300,000 annually, beginning in fiscal year 1992.

S. 1182 also states that the Board shall enter into contract with the Secretary of Labor, subject to availability of funds, for the conduct of 6 different studies. Three of the studies are to be completed by September 30, 1991 and the remaining 3 are to be completed by September 30, 1992. The bill outlines the types of studies required along with completion dates, although no specific authorization level is stated. The cost of each study would vary with the amount of data collection and statistical analysis involved. We assumed each study would require 4.5 man years of effort and would cost an estimated $225,000. No additional data collection efforts above and beyond what the Bureau of Labor Statistics currently collects were assumed in the estimate. If new survey instruments or data collection were required, the cost per study would increase significantly. After discussions with the Bureau of Labor Statistics, they were unable to tell us if any of these studies would require additional data collection.

The changes to the small business enterprise threshold, the treatment of Puerto Rico, the Virgin Islands and American Samoa, the tip credit and the addition of the training wage and provisions for remedial education are estimated to have no cost effects on the federal budget.

State And Local Governments. To the extent that state and local governments have workers who are paid at the current minimum wage or between the current minimum wage and higher rates prescribed in S. 1182, state and local government wage costs could increase with the enactment of S. 1182. There is no data with which to estimate the magnitude of these costs. Furthermore, the effects will vary from state to state. For example, there are currently 13 jurisdictions that have set minimum wage levels above the federal-

ly mandated $3.35 an hour. In these jurisdictions, the new federal minimum wage rates could have less of an effect than in states in which the minimum wage is at the current federal level.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Cory Leach (226-2820).

Sincerely,

ROBERT D. REISCHAUER, *Director.*

VIII. REGULATORY IMPACT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 1182 is made:

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OF CLASSIFICATIONS

It is estimated that S. 1182 would not regulate any additional number of individuals or businesses, as it does not contain any significant net expansion of coverage by the Fair Labor Standards Act. Section 3 of the bill adjusting the enterprise test to $500,000 would result in approximately the same number of individuals added to that exempt classification as those added to the coverage of the Act by removal of the section 13(a)(2) and 13(a)(4).

B. ECONOMIC IMPACT OF THE INDIVIDUALS, CONSUMERS, AND BUSINESSES AFFECTED

The economic impact of the legislation is relatively small in the aggregate and imperceptible to the individual, according to one expert testifying before the Committee. It is estimated that there are under 14 million employees, out of a labor force of over 115 million, earning less than $4.55 an hour, and most of these would be covered employees receiving increases over the three years ranging from $.05 an hour to $1.20 an hour.

According to testimony received by the Committee, these wage increases could result in an additional .2% added to the Consumer Price Index. One expert informed the Committee the inflationary impact on consumers of the minimum wage bill would be the equivalent of a 10 cent increase in the price of gasoline.

While over 90% of employees are covered by the FLSA and would be entitled to the new minimum wage rates, most businesses already pay in excess of the rates established by this bill, and will not realize a measurable impact.

C. IMPACT OF THE ACT ON PERSONAL PRIVACY

This legislation will have no impact on personal privacy.

D. ADDITIONAL PAPERWORK, TIME, AND COSTS

This legislation will result in some additional paperwork, time and costs to the Department of Labor, in upgrading their FLSA regulations to reflect the amendments to the Act and in preparing, printing, and distributing new minimum wage notices to covered employees. There will be no additional paperwork or recordkeeping for most covered employers, other than adjusting payrolls if cur-

rent compensation is below the new minimum rates, and in replacing existing minimum wage notices with new ones reflecting the new rates. Employers utilizing the training wage authorized in section 6 would be required to provide notice of rights, limitations and remedies to prospective trainees, which the Department of Labor would furnish.

IX. Section-by-Section Analysis

SECTION 1—SHORT TITLE

Section 1 provides that the short title of S. 1182 is the Fair Labor Standards Amendments of 1989.

SECTION 2—RESTORATION OF MINIMUM WAGE

Section 2(a) amends paragraph 1 of section 6(a) of the FLSA to provide the applicable minimum wage to be: not less than $3.85 an hour beginning October 30, 1989, not less than $4.25 an hour beginning October 1, 1990, and not less than $4.55 an hour after September 30, 1991.

Section 2(b) establishes a five member Minimum Wage Review Board which will conduct continuous analyses of economic and other relevant data and submit periodic recommendations to the Congress regarding adjustments necessary to preserve the purchasing power of the minimum wage. Each recommendation is to be accompanied by an estimate of the economic effects of enacting such an adjustment. The Board members are to serve staggered five year terms, selected by the majority and minority leaders of both the House and the Senate. The Board is to transmit its first recommendation no later than October 1, 1992, and each October thereafter.

SECTION 3—CHANGE IN ENTERPRISE TEST

Section 3 amends the retail or service enterprise test of sections 3(s), 13(a)(2), and 13(a)(4), of the FLSA (29 USC 203(s), and 213(a)) adjusting the test to $500,000 in annual gross sales for most small businesses. Except as provided elsewhere in the Act, enterprises grossing less than $500,000 will not be covered by the FLSA, although employees of enterprises covered under current law shall continue to receive the current wage, overtime and child labor protections. Numerous technical and conforming amendments are also included in this section.

SECTION 4—PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

Section 4 amends the FLSA to provide that the Virgin Islands be fully covered by the full 6(a)(1) rate, and American Samoa continue to utilize the special industry committee mechanism in the FLSA for establishment of applicable wage rates.

Section 4(c) provides that in the case of Puerto Rico, in addition to the employees designated in 29 USC 205(e) entitled to the rate described in 29 USC 206(a), workers in industries averaging $4.65 an hour or more would also be so entitled. Workers in industries averaging between $4.00 and $4.64 an hour would rise to the full rate in increments spread equally over five years. Workers in in-

dustries averaging below $4.00 would rise to the full rate in equal increments over six years, and public-sector employees covered by the FLSA (by P.L. 99-150), and in categories averaging less than $4.00 an hour, would receive the full rate spread equally over seven years.

The balance of section 4 are technical and conforming amendments.

SECTION 5—TIP CREDIT

Section 5 amends the tip credit provision described in section 3(m) (29 USC 203) from current 40% tip credit to 45% in 1990 and 50% thereafter.

SECTION 6—TRAINING WAGE

Section 6(a) authorizes an employer to pay a subminimum training wage of $3.35 (or 85% of the applicable rate, whichever is higher) to eligible employees while receiving on the job training.

Section 6(b) provides that such authorization commence October 1, 1989, and expire September 30, 1992.

Section 6(c) and 6(d) prohibit such training wage rates from being utilized to displace or replace existing workers, and imposes an overall cap on training hours at 25% of all hours worked in a single establishment.

Section 6(e) requires employers to provide written notice provided by the Secretary as to the requirements and limitations of the training wage, and available remedies. Section 6(f) provides for enforcement through existing provisions of the FLSA.

Section 6(g) provides definitions as to eligibility, duration of the training wage, proof requisites, and on-the-job training.

Section 6(h) provides that the Secretary shall report to Congress no later than July 1, 1992 as to the effectiveness of the training wage and its impact.

SECTION 7—MAXIMUM HOURS EXEMPTION FOR REMEDIAL EDUCATION

Section 7 provides that employers providing remedial education to eligible workers lacking basic skills are exempt for up to ten hours in a workweek from the overtime provisions of the Act, so long as such instruction is remedial in nature and does not include job specific training.

SECTION 8—APPLICABILITY OF FLSA TO CONGRESSIONAL EMPLOYEES

Section 8(a) provides a sense of the Senate that FLSA protections should apply to Senate employees, and that within 180 days of enactment the Rules Committee shall report to the Senate the necessary amendments to the Senate rules to apply those protections.

Section 8(b) applies FLSA rights and protections to House employees, to be administered through the Fair Employment Practices Act (H. Res. 15, 101th Congress).

SECTION 9—CIVIL PENALTIES

Section 9 provides for civil monetary penalties for repeat or willful violators of the minimum wage and overtime provision of the FLSA.

SECTION 10—OVERTIME REGULATIONS FOR CERTAIN COMPUTER PROFESSIONALS

Section 10 directs the Secretary to alter the professional overtime exemption regulations so as to permit certain computer professionals to qualify, so long as such professionals are compensated at a rate at least six and one-half times the minimum wage rate.

SECTION 11—STUDIES AND SURVEYS

Section 11 provides for studies and surveys, by the DOL, on the impact of the increase, characteristics of minimum wage employment, impact of the training wage, and on various other subjects affected by the bill.

X. MINORITY VIEWS OF MESSRS. HATCH, COATS, AND THURMOND

The President of the United States vetoed this legislation once, and he did so for sound and compelling economic reasons which have not changed. This legislation proposal would make bad law because the clear weight of economic evidence available to this Committee indicates that the results would be inconsistent with the stated objectives of its sponsors. This evidence, which has been reviewed over and over again in floor debate and in the minority views accompanying S. 4 (S. Report 101-6), indicates that the benefit accruing to poor families is far outweighed by the harm done. For that reason, we remain strongly opposed to this legislation proposal.

A REGRESSIVE TARIFF ON POOR FAMILIES

The fact that business costs are generally passed through to consumers in the form of higher prices for goods and services is fundamental economic knowledge. This price increase is actually a surcharge imposed on consumers to foot the bill for increased labor costs caused by a minimum wage increase. It is regressive—all families, rich or poor, must pay these costs.

The beneficiaries of minimum wage increase are, on the other hand, all employees earning less than the targeted increase. Once again, workers from poor families benefit in no greater degree than do workers from wealthy families.

The Congressional Budget Office points out that four-fifths of all minimum wage workers are not poor; almost three-quarters of minimum wage workers are members of families with incomes far above the poverty level. The Bureau of Labor Statistics points out that only about 18 percent of minimum wage workers are members of family units living in poverty.

The President's Council of Economic Advisors (C.E.A.) calculates that the minimum wage increase proposed would exact increases in consumer prices equaling about $13 billion dollars. For that cost, the C.E.A. estimates that a $2½ billion increase in the income of poor families would accrue.

A recent study by the Progressive Policy Institute offers a more precise picture. This study predicts that the increase in consumer prices attributed to an increase in the minimum wage would equal some $14.7 billion. After adjustments, this study calculates the surtax exacted upon poor families to be $112 per year.

The study's author, Robert Shapiro, sums up the economic consequences of an increase in the minimum wage for poor American families: "(m)ore than 75 percent of poor Americans would gain nothing (from an increase in the minimum wage), while having to pay an average of $112 per family in higher prices—in order to

boost the incomes of some low-wage workers, nearly 85 percent of whom are not poor." Policy Report, Progressive Policy Institute, June 1989, pg. 5.

A DISCRIMINATORY IMPACT ON LOW-SKILLED WORKERS

Businesses have one other option to comply with additional payroll costs. Rather than pass on the added costs to consumers, some will choose to cut costs through reductions in the labor force, reductions in hours, reductions in employee benefits, or simply not carrying out planned increases in employment.

According to the U.S. Department of Labor, an increase in the minimum wage to $4.55 would cost approximately 600,000 jobs due to this "disemployment" effect.

The majority concedes the existence of this effect, but argues that the net impact will be less than estimated by the Department of Labor. In doing so, they cite a number of studies which conflict with the estimates provided by numerous government, university and private sector economists which, in total, provide this Committee with a remarkably consistent range of estimates on this disemployment effect. The sum of this evidence is consistent with the Department of Labor's findings.

It is important to note, however, that the majority's analysis fails to address the relationship between levels of worker productivity, mandated wage increases, and this disemployment effect. As the clear weight of the available evidence indicates, it is the workers with the lowest productivity—the least skilled and least experienced—who will suffer this disemployment. Disproportionately, the least skilled and least experienced are the members of the most disadvantaged families and the young people who seek to get their start in our work force.

Thus, the disproportionate effect of job loss upon the poor and the young, particularly minority youth, leads to no other conclusion than that an increase in the minimum wage has a discriminatory impact upon the poor. As former Labor Secretary William E. Brock stated in testimony before this Committee, "the issue is minimal skills, not a minimum wage."

Regardless of the disemployment effect's total impact, for even one disadvantaged individual to be denied a job opportunity is one too many, if that result can be avoided. The majority, however, accepts this result and justifies it on the basis that the benefit to all minimum wage workers (85 percent of whom are not poor) outweighs the value of this discriminatory result.

OTHER CONCERNS

We have many other concerns regarding the specific consequences of this legislative proposal, such as the disparate regional impact of a minimum wage increase and the impact of this bill upon our federal deficit and federal spending programs. These concerns, as well as others, are detailed in the minority views contained in committee reports on S. 4 from the 101st Congress and S. 837 from the 100th Congress.

Also, since the majority's report has not materially altered and does not acknowledge the abundance of new evidence which has

surfaced, we wish to incorporate by reference the points made in the minority views in these reports, as they were tailored to specifically address the evidentiary points made by the Committee's majority in this, and preceding, committee reports.

CONCLUSION

For all the above reasons, we remain opposed to this legislative proposal. Weighing the evidence, we find that this proposal would tax five poor families to provide benefits to only one of those five poor families. This proposal would cause disemployment without attempting to significantly mitigate that effect. And where such penalties are exacted in a disproportionate fashion on low-skilled, disadvantaged families, this discriminatory impact exacerbates the problems faced by low-skilled workers and leads us to ask just who would be the beneficiaries of this legislation?

The evidence seems clear. This legislative proposal exacts more costs than benefits for poor American families. For what reason, among others explained in our previous minority views, it would make bad policy and should be soundly rejected.

We note that these views are being filed in the midst of a congressional recess period, meaning that most of our colleagues are not present to lend their signatures in support.

ORRIN HATCH.
DAN COATS.
STROM THURMOND.

XI. Changes in Existing Law

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part of section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change in proposed is shown in roman):

Fair Labor Standards Act

(29 U.S.C.—Chapter 8)

* * * * * * *

§ 203. Definitions

As used in this chapter—

(a)-(l) * * *

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities. If such board, lodging or other facilities are customarily furnished by such employer to his employees: *Provided,* That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further,* That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees. or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the way of a tipped employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by amount determined by the employer, but not by an amount [in excess of 40 per centum of the applicable minimum wage rate.] *in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning October 1, 1989 and (2) 50 percent of the applicable minimum wage rate after September 30, 1990,* except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee,

except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

* * * * * * *

(r) *(1)* "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor[: *Provided,* That, within]. *Within* the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, and agreement, [(1)] *(A)* that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or [(2)] *(B)* that it will join with other such establishments in the same industry for the purpose of collective purchasing, or [(3)] *(C)* that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments. [For purposes of this subsection,] *(2) for purposes of paragraph (1) the activities performed by any person or persons—*

[(1)] *(A)* in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is [public or private or] operated for profit or not for profit), or

[(2)] *(B)* in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless or whether or not such railway or carrier is public or private or operated for profit or not for profit), or

[(3)] *(C)* in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

[(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which—

[(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a

gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in paragraph (2), whose annual gross volume of sales made or business done s not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

[(2) is an enterprise which is comprised exclusively of one or more retail or service establishments, as defined in section 213(a)(2) of this title, and whose annual gross volume of sales made or business done is not less than $250,000 (exlusive of excise taxes at the retail level which are separately stated), beginning July 1, 1978, whose annual gross volume of sales made or business done is not less than $275,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1980, whose annual gross volume of sales made or business done is not less than $325,000 (exclusive of excise taxes at the retail level which are separately stated), and after December 31, 1981, whose annual gross volume of sales made or business done is not less than $362,500 (exclusive of excise taxes at the retail level which are separately stated);

[(3) is engaged in laundering, cleaning, or repairing clothing or fabrics;

[(4) is engaged in the business of construction or reconstruction, or both;

[(5) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

[(6) is an activity of a public agency.

[Any establishment which has as its only regular employees the owner thereof of the parent, spouse, child, or other member of the immediate family of such owned shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection. The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

[Notwithstanding paragraph (2), an enterprise which is comprised of one or more retail or service establishments, which on June 30, 1978, was subject to section 206(a)(1) of this title, and which because of a change in the dollar volume standard in such paragraph prescribed by the Fair Labor Standards Amendments of

1977 is not subject to such section, shall, if its annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), pay its employees not less than the minimum wage in effect under such section on the day before such change takes effect and shall pay its employees in accordance with section 207 of this title. A violation of the preceding sentence shall be considered a violation of section 206 or 207 of this title, as the case may be]

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

* * * * * * *

§ 205. Special industry committees for [Puerto Rico and the Virgin Islands] *American Samoa*

(a) ESTABLISHMENT; RESIDENTS AS MEMBERS OF COMMITTEES.—The Administrator shall as soon as practicable appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees in [Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands] *American Samoa* engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce or the Administrator may appoint separate industry committees to recommend the minimum, rate or rates of wages to be paid under said section to employees therein engaged in commerce or in the production of goods for commerce or employed in any enterprise engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of [such island or is-

lands] *American Samoa* where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of [Puerto Rico and the Virgin Islands.] *American Samoa.* In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees shall be subject to the provisions of section 208 of this title.

* * * * * * *

[(e) APPLICATION OF SECTIONS 206 AND 208 TO EMPLOYEES IN PUERTO RICO OR THE VIRGIN ISLANDS.—The provisions of this section, section 206(c) of this title, and section 208 of this title shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this chapter in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this chapter. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States.]

§ 206. Minimum wage

(a) * * *

* * * * * * *

[(1) not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;]

(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending September 30, 1989, not less than $3.85 an hour during the year beginning October 1, 1989, not less than $4.25 an hour during the year beginning October 1, 1990, and not less than $4.55 an hour after September 30, 1991;

* * * * * * *

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b) of this section, not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint [in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this chapter as amended from time to time.] *pursuant to sections 5 and 8.*

[Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico or the Virgin Islands.]

(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

(A) the United States,

(B) an establishment that is a hotel, motel or restaurant,

(C) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

(D) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on October 1, 1989, and each October 1 thereafter through October 1, 1993, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on October 1, 1993.

(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on October 1, 1989, and each October 1 thereafter through October 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on October 1, 1994.

(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1985 (Public Law 99-150), the minimum wage rate applicable to such employee shall be increased on October 1, 1989, and each October 1 thereafter through October 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on October 1, 1995.

The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection.

§ 207. Maximum hours

(a)–(p) * * *

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(q) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in

such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

§ 208. Wage orders in [Puerto Rico and the Virgin Islands] *American Samoa*

(a) CONGRESSIONAL POLICY; RECOMMENDATION OF WAGE RATE BY INDUSTRY COMMITTEE.—The policy of this chapter with respect to industries or enterprises in [Puerto Rico and the Virgin Islands] *American Samoa* engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title. [The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee—

[(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who but for section 206(c) of this title would be subject to the minimum wage requirements of section 206(a)(1) of this title, and

[(2) may, from time to time, recommend increases in the incremental increases authorized by section 206(c)(2) of this title.] The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in [Puerto Rico or the Virgin Island, or in Puerto Rico and the Virgin Islands,] *American Samoa* engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in production of goods for commerce in any such industry or classifications therein, *and who but for section 206(a)(3) would be subject to the minimum wage requirements of section 206(a)(1).* Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) INVESTIGATION OF INDUSTRY CONDITION BY INDUSTRY COMMITTEE; MATTERS CONSIDERED.—Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may

be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in [Puerto Rico or in the Virgin Islands] *American Samoa* a competitive advantage over any industry in the United States outside of [Puerto Rico and the Virgin Islands] *American Samoa*; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a)or 206(b) of this title, which would be applicable but for section 206[c]*(a)(3)* of this title, unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.

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§ 213. Exemptions

(a) MINIMUM WAGE AND MAXIMUM HOUR REQUIREMENTS.—

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[(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hosptial, insitution, or school described in section 203(s)(5) of this title), if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment in located, and such establishment is not in an enterprise described in section 203(s) of this title. A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or]

* * * * * * *

[(4) any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided,* That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or]

* * * * * * *

(g) CERTAIN EMPLOYMENT IN RETAIL OR SERVICE ESTABLISHMENTS, AGRICULTURE.—The exemption from section 206 of this title provided by [paragraphs (2) and] *paragraph* (6) of subsection (a) of this section shall not apply with respect to any employee employed by

an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated)[, except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title].

§ 214. Employment under special certificates

(a) LEARNERS, APPRENTICES, MESSENGERS.—The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) STUDENTS.—(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall be special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 hour, whichever is the higher [or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c) of this title], of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

* * * * * * *

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title or not less than $1.30 an hour, whichever is the higher [or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title], of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special cer-

tificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher [or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title] of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

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§ 216. Penalties

(a) FINES AND IMPRISONMENT.—

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(e) CIVIL PENALITIES FOR CHILD LABOR VIOLATIONS.—Any person who violates the provisions of section 212 of this title, relating to child labor, [or any regulation issued under that section,] *any person who repeatedly or willfully violates section 6 or 7,* shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

(1) deducted from any sums owing by the United States to the person charged;

(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(3) ordered by the court, in an action brought for a violation of section 215(a)(4) *or a repeated or willful violation of section 15(a)(2)* of this title, to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 9a of this title.

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